

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.

S. 744

To provide for comprehensive immigration reform and for
other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. SCHUMER (for himself, Mr. GRA-
HAM, Mr. DURBIN, and Mr. FLAKE)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Border Security, Economic Opportunity, and Immigra-
6 tion Modernization Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Statement of congressional findings.
- Sec. 3. Effective date triggers.
- Sec. 4. Southern Border Security Commission.
- Sec. 5. Comprehensive Southern Border Security Strategy and Southern Border Fencing Strategy.
- Sec. 6. Comprehensive Immigration Reform Trust Fund.

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- Sec. 7. Reference to the Immigration and Nationality Act.
- Sec. 8. Definitions.

TITLE I—BORDER SECURITY

- Sec. 1101. Definitions.
- Sec. 1102. Additional U.S. Customs and Border Protection officers.
- Sec. 1103. National Guard support to secure the Southern border.
- Sec. 1104. Enhancement of existing border security operations.
- Sec. 1105. Border security on certain Federal land.
- Sec. 1106. Equipment and technology.
- Sec. 1107. Access to emergency personnel.
- Sec. 1108. Southwest Border Region Prosecution Initiative.
- Sec. 1109. Interagency collaboration.
- Sec. 1110. SCAAP reauthorization.
- Sec. 1111. Use of force.
- Sec. 1112. Training for border security and immigration enforcement officers.
- Sec. 1113. Department of Homeland Security Border Oversight Task Force.
- Sec. 1114. Immigration ombudsman.
- Sec. 1115. Reports.
- Sec. 1116. Severability and delegation.

TITLE II—IMMIGRANT VISAS

Subtitle A—Registration and Adjustment of Registered Provisional
Immigrants

- Sec. 2101. Registered provisional immigrant status.
- Sec. 2102. Adjustment of status of registered provisional immigrants.
- Sec. 2103. The DREAM Act.
- Sec. 2104. Additional requirements.
- Sec. 2105. Criminal penalty.
- Sec. 2106. Grant program to assist eligible applicants.
- Sec. 2107. Conforming amendments to the Social Security Act.
- Sec. 2108. Government contracting and acquisition of real property interest.
- Sec. 2109. Long-term legal residents of the Commonwealth of the Northern
Mariana Islands.
- Sec. 2110. Rulemaking.
- Sec. 2111. Statutory construction.

Subtitle B—Agricultural Worker Program

- Sec. 2201. Short title.
- Sec. 2202. Definitions.

CHAPTER 1—PROGRAM FOR EARNED STATUS ADJUSTMENT OF
AGRICULTURAL WORKERS

SUBCHAPTER A—BLUE CARD STATUS

- Sec. 2211. Requirements for blue card status.
- Sec. 2212. Adjustment to permanent resident status.
- Sec. 2213. Use of information.
- Sec. 2214. Reports on blue cards.
- Sec. 2215. Authorization of appropriations.

SUBCHAPTER B—CORRECTION OF SOCIAL SECURITY RECORDS

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Sec. 2221. Correction of social security records.

CHAPTER 2—NONIMMIGRANT AGRICULTURAL VISA PROGRAM

Sec. 2231. Nonimmigrant classification for nonimmigrant agricultural workers.

Sec. 2232. Establishment of nonimmigrant agricultural worker program.

Sec. 2233. Transition of H-2A Worker Program.

Sec. 2234. Reports to Congress on nonimmigrant agricultural workers.

CHAPTER 3—OTHER PROVISIONS

Sec. 2241. Rulemaking.

Sec. 2242. Reports to Congress.

Sec. 2243. Effective date.

Subtitle C—Future Immigration

Sec. 2301. Merit-based points track one.

Sec. 2302. Merit-based track two.

Sec. 2303. Repeal of the diversity visa program.

Sec. 2304. World-wide levels and recapture of unused immigrant visas.

Sec. 2305. Reclassification of spouses and minor children of lawful permanent residents as immediate relatives.

Sec. 2306. Numerical limitations on individual foreign states.

Sec. 2307. Allocation of immigrant visas.

Sec. 2308. V nonimmigrant visas.

Sec. 2309. Fiancée and fiancé child status protection.

Sec. 2310. Equal treatment for all stepchildren.

Sec. 2311. Modification of adoption age requirements.

Sec. 2312. Relief for orphans, widows, and widowers.

Sec. 2313. Discretionary authority with respect to removal, deportation, or inadmissibility of citizen and resident immediate family members.

Sec. 2314. Waivers of inadmissibility.

Sec. 2315. Continuous presence.

Sec. 2316. Global health care cooperation.

Sec. 2317. Extension and improvement of the Iraqi special immigrant visa program.

Sec. 2318. Extension and improvement of the Afghan special immigrant visa program.

Sec. 2319. Elimination of sunsets for certain visa programs.

Subtitle D—Conrad State 30 and Physician Access

Sec. 2401. Conrad State 30 Program.

Sec. 2402. Retaining physicians who have practiced in medically underserved communities.

Sec. 2403. Employment protections for physicians.

Sec. 2404. Allotment of Conrad 30 waivers.

Sec. 2405. Amendments to the procedures, definitions, and other provisions related to physician immigration.

Subtitle E—Integration

Sec. 2501. Definitions.

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Sec. 2521. Establishment.

Sec. 2522. Purpose.

Sec. 2523. Membership.

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CHAPTER 2—PUBLIC-PRIVATE PARTNERSHIP

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Sec. 2532. Funding.

Sec. 2533. Purposes.

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Sec. 2537. Initial Entry, Adjustment, and Citizenship Assistance Grant Program.

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Sec. 2541. Authorization of appropriations.

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Sec. 2551. Waiver of English requirement for senior new Americans.

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Sec. 3101. Unlawful employment of unauthorized aliens.

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Subtitle B—Protecting United States Workers

Sec. 3201. Protections for victims of serious violations of labor and employment law or crime.

Sec. 3202. Employment Verification System Education Funding.

Sec. 3203. Directive to the United States Sentencing Commission.

Subtitle C—Other Provisions

Sec. 3301. Funding.

Sec. 3302. Effective date.

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Subtitle D—Asylum and Refugee Provisions

- Sec. 3401. Time limits and efficient adjudication of genuine asylum claims.
- Sec. 3402. Refugee family protections.
- Sec. 3403. Clarification on designation of certain refugees.
- Sec. 3404. Asylum determination efficiency.
- Sec. 3405. Stateless persons in the United States.
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Subtitle E—Shortage of Immigration Court Resources for Removal Proceedings

- Sec. 3501. Shortage of immigration court personnel for removal proceedings.
- Sec. 3502. Improving immigration court efficiency and reducing costs by increasing access to legal information.
- Sec. 3503. Office of Legal Access Programs.
- Sec. 3504. Codifying Board of Immigration Appeals.
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Subtitle F—Prevention of Trafficking in Persons and Abuses Involving Workers Recruited Abroad

- Sec. 3601. Definitions.
- Sec. 3602. Disclosure.
- Sec. 3603. Prohibition on discrimination.
- Sec. 3604. Recruitment fees.
- Sec. 3605. Registration.
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- Sec. 3607. Maintenance of lists.
- Sec. 3608. Amendment to the Immigration and Nationality Act.
- Sec. 3609. Responsibilities of Secretary of State.
- Sec. 3610. Enforcement provisions.
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Subtitle G—Interior Enforcement

- Sec. 3701. Criminal street gangs.
- Sec. 3702. Banning habitual drunk drivers from the United States.
- Sec. 3703. Sexual abuse of a minor.
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- Sec. 3706. Penalties related to removal.
- Sec. 3707. Reform of passport, visa, and immigration fraud offenses.
- Sec. 3708. Combating schemes to defraud aliens.
- Sec. 3709. Inadmissibility and removal for passport and immigration fraud offenses.
- Sec. 3710. Directives related to passport and document fraud.
- Sec. 3711. Inadmissible aliens.
- Sec. 3712. Organized and abusive human smuggling activities.
- Sec. 3713. Preventing criminals from renouncing citizenship during wartime.
- Sec. 3714. Diplomatic security service.
- Sec. 3715. Secure alternatives programs.
- Sec. 3716. Oversight of detention facilities.

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- Sec. 3717. Procedures for bond hearings and filing of notices to appear.
- Sec. 3718. Sanctions for countries that delay or prevent repatriation of their nationals.
- Sec. 3719. Gross violations of human rights.

TITLE IV—REFORMS TO NONIMMIGRANT VISA PROGRAMS

Subtitle A—Employment-based Nonimmigrant Visas

- Sec. 4101. Market-based H-1B Visa limits.
- Sec. 4102. Employment authorization for dependents of employment-based nonimmigrants.
- Sec. 4103. Eliminating impediments to worker mobility.
- Sec. 4104. STEM Education and Training.
- Sec. 4105. H-1B and L Visa fees.

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CHAPTER 1—H-1B EMPLOYER APPLICATION REQUIREMENTS

- Sec. 4211. Modification of application requirements.
- Sec. 4212. Requirements for admission of nonimmigrant nurses in health professional shortage areas.
- Sec. 4213. New application requirements.
- Sec. 4214. Application review requirements.

CHAPTER 2— INVESTIGATION AND DISPOSITION OF COMPLAINTS AGAINST
H-1B EMPLOYERS

- Sec. 4221. General modification of procedures for investigation and disposition.
- Sec. 4222. Investigation, working conditions, and penalties.
- Sec. 4223. Initiation of investigations.
- Sec. 4224. Information sharing.

CHAPTER 3—OTHER PROTECTIONS

- Sec. 4231. Posting available positions through the Department of Labor.
- Sec. 4232. Requirements for information for H-1B and L nonimmigrants.
- Sec. 4233. Filing fee for H-1B-dependent employers.
- Sec. 4234. Providing premium processing of employment-based visa petitions.
- Sec. 4235. Technical correction.
- Sec. 4236. Application.

Subtitle C—L Visa Fraud and Abuse Protections

- Sec. 4301. Prohibition on outplacement of L nonimmigrants.
- Sec. 4302. L employer petition requirements for employment at new offices.
- Sec. 4303. Cooperation with Secretary of State.
- Sec. 4304. Limitation on employment of L nonimmigrants.
- Sec. 4305. Filing fee for L nonimmigrants.
- Sec. 4306. Investigation and disposition of complaints against L nonimmigrant employers.
- Sec. 4307. Penalties.
- Sec. 4308. Prohibition on retaliation against L nonimmigrants.
- Sec. 4309. Reports on L nonimmigrants.
- Sec. 4310. Application.
- Sec. 4311. Report on L blanket petition process.

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Subtitle D—Other Nonimmigrant Visas

- Sec. 4401. Nonimmigrant visas for students.
- Sec. 4402. Classification for specialty occupation workers from free trade countries.
- Sec. 4403. E-visa reform.
- Sec. 4404. Other changes to nonimmigrant visas.
- Sec. 4405. Treatment of nonimmigrants during adjudication of application.
- Sec. 4406. Nonimmigrant elementary and secondary school students.
- Sec. 4407. J-1 Visa Exchange Visitor Program fee.
- Sec. 4408. F-1 Visa fee.

Subtitle E—JOLT Act

- Sec. 4501. Short titles.
- Sec. 4502. Premium processing.
- Sec. 4503. Encouraging Canadian tourism to the United States.
- Sec. 4504. Retiree visa.
- Sec. 4505. Incentives for foreign visitors visiting the United States during low peak seasons.
- Sec. 4506. Visa waiver program enhanced security and reform.
- Sec. 4507. Expediting entry for priority visitors.
- Sec. 4508. Visa processing.
- Sec. 4509. B Visa fee.

Subtitle F—Reforms to the H-2B Visa Program

- Sec. 4601. Extension of returning worker exemption to H-2B numerical limitation.
- Sec. 4602. Other requirements for H-2B employers.
- Sec. 4603. Executives and managers.
- Sec. 4604. Honoraria.
- Sec. 4605. Nonimmigrants participating in relief operations.
- Sec. 4606. Nonimmigrants performing maintenance on common carriers.

Subtitle G—W Nonimmigrant Visas

- Sec. 4701. Bureau of Immigration and Labor Market Research.
- Sec. 4702. Nonimmigrant classification for W nonimmigrants.
- Sec. 4703. Admission of W nonimmigrant workers.

Subtitle H—Investing in New Venture, Entrepreneurial Startups, and Technologies

- Sec. 4801. Nonimmigrant INVEST visas.
- Sec. 4802. INVEST immigrant visa.
- Sec. 4803. Administration and oversight.

1 SEC. 2. STATEMENT OF CONGRESSIONAL FINDINGS.

2 Congress makes the following findings:

3 (1) The passage of this Act recognizes that the
4 primary tenets of its success depend on securing the

1 sovereignty of the United States of America and es-
2 tablishing a coherent and just system for integrating
3 those who seek to join American society.

4 (2) We have a right, and duty, to maintain and
5 secure our borders, and to keep our country safe and
6 prosperous. As a nation founded, built and sustained
7 by immigrants we also have a responsibility to har-
8 ness the power of that tradition in a balanced way
9 that secures a more prosperous future for America.

10 (3) We have always welcomed newcomers to the
11 United States and will continue to do so. But in
12 order to qualify for the honor and privilege of even-
13 tual citizenship, our laws must be followed. The
14 world depends on America to be strong — economi-
15 cally, militarily and ethically. The establishment of a
16 stable, just and efficient immigration system only
17 supports those goals. As a nation, we have the right
18 and responsibility to make our borders safe, to es-
19 tablish clear and just rules for seeking citizenship, to
20 control the flow of legal immigration, and to elimi-
21 nate illegal immigration, which in some cases has be-
22 come a threat to our national security.

23 (4) All parts of this Act are premised on the
24 right and need of the United States to achieve these

1 goals, and to protect its borders and maintain its
2 sovereignty.

3 **SEC. 3. EFFECTIVE DATE TRIGGERS.**

4 (a) DEFINITIONS.—In this section:

5 (1) COMMISSION.—The term “Commission”
6 means the Southern Border Security Commission es-
7 tablished pursuant to section 4.

8 (2) COMPREHENSIVE SOUTHERN BORDER SECU-
9 RITY STRATEGY.—The term “Comprehensive South-
10 ern Border Security Strategy” means the strategy
11 established by the Secretary pursuant to section 5(a)
12 to achieve and maintain an effectiveness rate of 90
13 percent or higher in all high risk border sectors.

14 (3) EFFECTIVE CONTROL.—The term “effective
15 control” means the ability to achieve and maintain,
16 in a Border Patrol sector—

17 (A) persistent surveillance; and

18 (B) an effectiveness rate of 90 percent or
19 higher.

20 (4) EFFECTIVENESS RATE.—The “effectiveness
21 rate”, in the case of a border sector, is the percent-
22 age calculated by dividing the number of apprehen-
23 sions and turn backs in the sector during a fiscal
24 year by the total number of illegal entries in the sec-
25 tor during such fiscal year.

1 (5) HIGH RISK BORDER SECTOR.—The term
2 “high risk border sector” means a border sector in
3 which more than 30,000 individuals were appre-
4 hended during the most recent fiscal year.

5 (6) SOUTHERN BORDER.—The term “Southern
6 border” means the international border between the
7 United States and Mexico.

8 (7) SOUTHERN BORDER FENCING STRATEGY.—
9 The term “Southern Border Fencing Strategy”
10 means the strategy established by the Secretary pur-
11 suant to section 5(b) that identifies where fencing,
12 including double-layer fencing, should be deployed
13 along the Southern border.

14 (b) BORDER SECURITY GOAL.—The Department’s
15 border security goal is to achieve and maintain effective
16 control in high risk border sectors along the Southern bor-
17 der.

18 (c) TRIGGERS.—

19 (1) PROCESSING OF APPLICATIONS FOR REG-
20 ISTERED PROVISIONAL IMMIGRANT STATUS.—Not
21 earlier than the date upon which the Secretary has
22 submitted to Congress the Notice of Commencement
23 of implementation of the Comprehensive Southern
24 Border Security Strategy and the Southern Border
25 Fencing Strategy under section 5 of this Act, the

1 Secretary may commence processing applications for
2 registered provisional immigrant status pursuant to
3 section 245B of the Immigration and Nationality
4 Act, as added by section 2101 of this Act.

5 (2) ADJUSTMENT OF STATUS OF REGISTERED
6 PROVISIONAL IMMIGRANTS.—

7 (A) IN GENERAL.—Except as provided in
8 subparagraph (B), the Secretary may not ad-
9 just the status of aliens who have been granted
10 registered provisional immigrant status, except
11 for aliens granted blue card status under sec-
12 tion 2201 of this Act or described in section
13 245D(b) of the Immigration and Nationality
14 Act, until the Secretary, after consultation with
15 the Comptroller General of the United States,
16 submits to the President and Congress a writ-
17 ten certification that—

18 (i) the Comprehensive Southern Bor-
19 der Security Strategy has been submitted
20 to Congress and is substantially deployed
21 and substantially operational;

22 (ii) the Southern Border Fencing
23 Strategy has been submitted to Congress,
24 implemented, and is substantially com-
25 pleted;

1 (iii) the Secretary has implemented
2 the mandatory employment verification
3 system required by section 274A of the
4 Immigration and Nationality Act (8 U.S.C.
5 1324a), as amended by section 3101, for
6 use by all employers to prevent unauthor-
7 ized workers from obtaining employment in
8 the United States; and

9 (iv) the Secretary is using an elec-
10 tronic exit system at air and sea ports of
11 entry that operates by collecting machine-
12 readable visa or passport information from
13 air and vessel carriers.

14 (B) EXCEPTION.—The Secretary shall per-
15 mit registered provisional immigrants to apply
16 for an adjustment to lawful permanent resident
17 status if—

18 (i)(I) litigation or a force majeure has
19 prevented 1 or more of the conditions de-
20 scribed in clauses (i) through (iv) of sub-
21 paragraph (A) from being implemented; or

22 (II) the implementation of subpara-
23 graph (A) has been held unconstitutional
24 by the Supreme Court of the United States
25 or the Supreme Court has granted certio-

1 rari to the litigation on the constitu-
2 tionality of implementation of subpara-
3 graph (A); and

4 (ii) 10 years have elapsed since the
5 date of the enactment of this Act.

6 (d) WAIVER OF LEGAL REQUIREMENTS NECESSARY
7 FOR IMPROVEMENT AT BORDERS.—Notwithstanding any
8 other provision of law, the Secretary is authorized to waive
9 all legal requirements that the Secretary determines to be
10 necessary to ensure expeditious construction of the bar-
11 riers, roads, or other physical tactical infrastructure need-
12 ed to fulfill the requirements under this section. Any de-
13 termination by the Secretary under this section shall be
14 effective upon publication in the Federal Register.

15 (e) FEDERAL COURT REVIEW.—

16 (1) IN GENERAL.—The district courts of the
17 United States shall have exclusive jurisdiction to
18 hear all causes or claims arising from any action un-
19 dertaken, or any decision made, by the Secretary
20 under subsection (d). A cause of action or claim may
21 only be brought alleging a violation of the Constitu-
22 tion of the United States. The court does not have
23 jurisdiction to hear any claim not specified in this
24 paragraph.

1 (2) TIME FOR FILING COMPLAINT.—If a cause
2 or claim under paragraph (1) is not filed within 60
3 days after the date of the contested action or deci-
4 sion by the Secretary, the claim shall be barred.

5 (3) APPELLATE REVIEW.—An interlocutory or
6 final judgment, decree, or order of the district court
7 may be reviewed only upon petition for a writ of cer-
8 tiorari to the Supreme Court of the United States.

9 **SEC. 4. SOUTHERN BORDER SECURITY COMMISSION.**

10 (a) ESTABLISHMENT.—If the Secretary certifies that
11 the Department has not achieved effective control in all
12 high risk border sectors during any fiscal year beginning
13 before the date that is 5 years after the date of the enact-
14 ment of this Act, not later than 60 days after such certifi-
15 cation, there shall be established a commission to be
16 known as the “Southern Border Security Commission”
17 (referred to in this section as the “Commission”).

18 (b) COMPOSITION.—

19 (1) IN GENERAL.—The Commission shall be
20 composed of—

21 (A) 2 members who shall be appointed by
22 the President;

23 (B) 2 members who shall be appointed by
24 the President pro tempore of the Senate, of
25 which—

1 (i) 1 shall be appointed upon the rec-
2 ommendation of the leader in the Senate of
3 the political party that is not the political
4 party of the President; and

5 (ii) 1 shall be appointed upon the rec-
6 ommendation of the leader in the Senate of
7 the other political party;

8 (C) 2 members who shall be appointed by
9 the Speaker of the House of Representatives, of
10 which—

11 (i) 1 shall be appointed upon the rec-
12 ommendation of the leader in the House of
13 Representatives of the political party that
14 is not the political party of the President;
15 and

16 (ii) 1 shall be appointed upon the rec-
17 ommendation of the leader in the House of
18 Representatives of the other political party;
19 and

20 (D) 4 members, consisting of 1 member
21 from each of the States along the Southern bor-
22 der, who shall be—

23 (i) the Governor of such State; or

24 (ii) appointed by the Governor of each
25 such State.

1 (2) QUALIFICATION FOR APPOINTMENT.—Ap-
2 pointed members of the Commission shall be distin-
3 guished individuals noted for their knowledge and
4 experience in the field of border security at the Fed-
5 eral, State, or local level.

6 (3) TIME OF APPOINTMENT.—The appoint-
7 ments required by paragraph (1) shall be made not
8 later than 60 days after the Secretary makes a cer-
9 tification described in subsection (a).

10 (4) CHAIR.—At the first meeting of the Com-
11 mission, a majority of the members of the Commis-
12 sion present and voting shall elect the Chair of the
13 Commission.

14 (5) VACANCIES.—Any vacancy of the Commis-
15 sion shall not affect its powers, but shall be filled in
16 the manner in which the original appointment was
17 made.

18 (6) RULES.—The Commission shall establish
19 the rules and procedures of the Commission which
20 shall require the approval of at least 6 members of
21 the Commission.

22 (c) DUTIES.—The Commission's primary responsi-
23 bility shall be making recommendations to the President,
24 the Secretary, and Congress on policies to achieve and

1 maintain the border security goal specified in section 3(b)
2 by achieving and maintaining—

3 (1) the capability to engage in, and to engage
4 in, persistent surveillance in high risk border sectors
5 along the Southern border; and

6 (2) an effectiveness rate of 90 percent or higher
7 in all high risk border sectors along the Southern
8 border.

9 (d) REPORT.—Not later than 180 days after the end
10 of the 5-year period described in subsection (a), the Com-
11 mission shall submit to the President, the Secretary, and
12 Congress a report setting forth specific recommendations
13 for policies for achieving and maintaining the border secu-
14 rity goals specified in subsection (c). The report shall in-
15 clude, at a minimum, recommendations for the personnel,
16 infrastructure, technology, and other resources required to
17 achieve and maintain an effectiveness rate of 90 percent
18 or higher in all high risk border sectors.

19 (e) TRAVEL EXPENSES.—Members of the Commis-
20 sion shall be allowed travel expenses, including per diem
21 in lieu of subsistence rates authorized for employees of
22 agencies under subchapter I of chapter 57 of title 5,
23 United States Code, while away from their homes or reg-
24 ular places of business in the performance of services for
25 the Commission.

1 (f) ADMINISTRATIVE SUPPORT.—The Secretary shall
2 provide the Commission such staff and administrative
3 services as may be necessary and appropriate for the Com-
4 mission to perform its functions. Any employee of the ex-
5 ecutive branch of Government may be detailed to the Com-
6 mission without reimbursement to the agency of that em-
7 ployee and such detail shall be without interruption or loss
8 of civil service or status or privilege.

9 (g) COMPTROLLER GENERAL REVIEW.—The Comp-
10 troller General of the United States shall review the rec-
11 ommendations in the report submitted under subsection
12 (d) in order to determine—

13 (1) whether any of the recommendations are
14 likely to achieve effective control in all high risk bor-
15 der sectors;

16 (2) which recommendations are most likely to
17 achieve effective control; and

18 (3) whether such recommendations are feasible
19 within existing budget constraints.

20 (h) TERMINATION.—The Commission shall terminate
21 30 days after the date on which the report is submitted
22 under subsection (d).

1 **SEC. 5. COMPREHENSIVE SOUTHERN BORDER SECURITY**
2 **STRATEGY AND SOUTHERN BORDER FENC-**
3 **ING STRATEGY.**

4 (a) COMPREHENSIVE SOUTHERN BORDER SECURITY
5 STRATEGY.—

6 (1) IN GENERAL.—Not later than 180 days
7 after the date of the enactment of this Act, the Sec-
8 retary shall submit a strategy, to be known as the
9 “Comprehensive Southern Border Security Strat-
10 egy”, for achieving and maintaining effective control
11 between the ports of entry in all high risk border
12 sectors along the Southern border, to—

13 (A) the Committee on Homeland Security
14 and Governmental Affairs of the Senate;

15 (B) the Committee on Homeland Security
16 of the House of Representatives;

17 (C) the Committee on Appropriations of
18 the Senate;

19 (D) the Committee on Appropriations of
20 the House of Representatives; and

21 (E) the Comptroller General of the United
22 States.

23 (2) ELEMENTS.—The Comprehensive Southern
24 Border Security Strategy shall specify—

25 (A) the priorities that must be met for the
26 strategy to be successfully executed;

1 (B) the capabilities that must be obtained
2 to meet each of the priorities referred to in sub-
3 paragraph (A), including—

4 (i) surveillance and detection capabili-
5 ties developed or used by the Department
6 of Defense to increase situational aware-
7 ness; and

8 (ii) the requirement for stationing suf-
9 ficient Border Patrol agents and Customs
10 and Border Protection officers between
11 and at ports of entry along the Southern
12 border; and

13 (C) the resources, including personnel, in-
14 frastructure, and technology that must be pro-
15 cured and successfully deployed to obtain the
16 capabilities referred to in subparagraph (B), in-
17 cluding—

18 (i) fixed, mobile, and agent portable
19 surveillance systems; and

20 (ii) unarmed, unmanned aerial sys-
21 tems and unarmed, fixed-wing aircraft and
22 necessary and qualified staff and equip-
23 ment to fully utilize such systems.

1 (3) ADDITIONAL ELEMENTS REGARDING EXE-
2 CUTION.—The Comprehensive Southern Border Se-
3 curity Strategy shall describe—

4 (A) how the resources referred to in para-
5 graph (2)(C) will be properly aligned with the
6 priorities referred to in paragraph (2)(A) to en-
7 sure that the strategy will be successfully exe-
8 cuted;

9 (B) the interim goals that must be accom-
10 plished to successfully implement the strategy;
11 and

12 (C) the schedule and supporting milestones
13 under which the Department will accomplish
14 the interim goals referred to in subparagraph
15 (B).

16 (4) IMPLEMENTATION.—

17 (A) IN GENERAL.—The Secretary shall
18 commence the implementation of the Com-
19 prehensive Southern Border Security Strategy
20 immediately after submitting the strategy under
21 paragraph (1).

22 (B) NOTICE OF COMMENCEMENT.—Upon
23 commencing the implementation of the strategy,
24 the Secretary shall submit a notice of com-
25 mencement of such implementation to—

1 (i) Congress; and

2 (ii) the Comptroller General of the
3 United States.

4 (5) SEMIANNUAL REPORTS.—

5 (A) IN GENERAL.—After the Comprehen-
6 sive Southern Border Security Strategy is sub-
7 mitted under paragraph (1),the Secretary shall
8 submit, not later than May 15 and November
9 15 of each year, a report on the status of the
10 Department’s implementation of the strategy
11 to—

12 (i) the Committee on Homeland Secu-
13 rity and Governmental Affairs of the Sen-
14 ate;

15 (ii) the Committee on Homeland Se-
16 curity of the House of Representatives;

17 (iii) the Committee on Appropriations
18 of the Senate; and

19 (iv) the Committee on Appropriations
20 of the House of Representatives.

21 (B) ELEMENTS.—Each report submitted
22 under subparagraph (A) shall include—

23 (i) a detailed description of the steps
24 the Department has taken, or plans to
25 take, to execute the strategy submitted

1 under paragraph (1), including the
2 progress made toward achieving the in-
3 terim goals and milestone schedule estab-
4 lished pursuant to subparagraphs (B) and
5 (C) of paragraph (3);

6 (ii) a detailed description of—

7 (I) any impediments identified in
8 the Department's efforts to execute
9 the strategy;

10 (II) the actions the Department
11 has taken, or plans to take, to address
12 such impediments; and

13 (III) any additional measures de-
14 veloped by the Department to meas-
15 ure the state of security along the
16 Southern border; and

17 (iii) for each Border Patrol sector
18 along the Southern border—

19 (I) the effectiveness rate for each
20 individual Border Patrol sector and
21 the aggregated effectiveness rate;

22 (II) the number of recidivist ap-
23 prehensions, sorted by Border Patrol
24 sector; and

1 (III) the recidivism rate for all
2 unique subjects that received a crimi-
3 nal consequence through the Con-
4 sequence Delivery System process.

5 (b) SOUTHERN BORDER FENCING STRATEGY.—

6 (1) ESTABLISHMENT.—Not later than 180 days
7 after the date of the enactment of this Act, the Sec-
8 retary shall establish a strategy, to be known as the
9 “Southern Border Fencing Strategy”, to identify
10 where fencing, including double-layer fencing, infra-
11 structure, and technology should be deployed along
12 the Southern border.

13 (2) SUBMISSION.—The Secretary shall submit
14 the Southern Border Fencing Strategy to Congress
15 and the Comptroller General of the United States
16 for review.

17 (3) NOTICE OF COMMENCEMENT.—Upon com-
18 mencing the implementation of the Southern Border
19 Fencing Strategy, the Secretary shall submit a no-
20 tice of commencement of the implementation of the
21 Strategy to Congress and the Comptroller General of
22 the United States.

1 **SEC. 6. COMPREHENSIVE IMMIGRATION REFORM TRUST**
2 **FUND.**

3 (a) COMPREHENSIVE IMMIGRATION REFORM TRUST
4 FUND.—

5 (1) ESTABLISHMENT.—There is established in
6 the Treasury a separate account, to be known as the
7 Comprehensive Immigration Reform Trust Fund
8 (referred to in this section as the “Trust Fund”),
9 consisting of—

10 (A) amounts transferred from the general
11 fund of the Treasury under paragraph (2)(A);
12 and

13 (B) proceeds from the fees described in
14 paragraph (2)(B).

15 (2) DEPOSITS.—

16 (A) INITIAL FUNDING.—On the later of
17 the date of the enactment of this Act or Octo-
18 ber 1, 2013, \$6,500,000,000 shall be trans-
19 ferred from the general fund of the Treasury to
20 the Trust Fund.

21 (B) START-UP COSTS.—On the later of the
22 date of the enactment of this Act or October 1,
23 2013, \$1,000,000,000 is hereby appropriated
24 from the general fund of the Treasury, to re-
25 main available until September 30, 2015, to the
26 Department of Homeland Security and the De-

1 partment of State to pay for one-time and
2 startup costs necessary to implement this Act,
3 including application processing activities by
4 U.S. Citizenship and Immigration Services.

5 (C) ONGOING FUNDING.—In addition to
6 the funding described in subparagraph (A), the
7 following amounts shall be deposited in the
8 trust fund:

9 (i) ELECTRONIC TRAVEL AUTHORIZA-
10 TION SYSTEM FEES.—Fees collected under
11 section 217(h)(3)(B)(i)(II) of the Immigra-
12 tion and Nationality Act, as added by sec-
13 tion 1102(c).

14 (ii) REGISTERED PROVISIONAL IMMI-
15 GRANT PENALTIES.—Penalties collected
16 under section 245B(c)(10)(C) of the Immi-
17 gration and Nationality Act, as added by
18 section 2101.

19 (iii) BLUE CARD PENALTY.—Penalties
20 collected under section 2211(b)(9)(C).

21 (iv) FINE FOR ADJUSTMENT FROM
22 BLUE CARD STATUS.—Fines collected
23 under section 245F(a)(5) of the Immigra-
24 tion and Nationality Act, as added by sec-
25 tion 2212(a).

1 (v) PENALTIES FOR FALSE STATE-
2 MENTS IN APPLICATIONS.—Fines collected
3 under section 245F(f) of the Immigration
4 and Nationality Act, as added by section
5 2212(a).

6 (vi) MERIT SYSTEM GREEN CARD
7 FEES.—Fees collected under section
8 203(c)(6) of the Immigration and Nation-
9 ality Act, as amended by section
10 2301(a)(2).

11 (vii) H-1B AND L VISA FEES.—Fees
12 collected under section 281(d) of the Immi-
13 gration and Nationality Act, as added by
14 section 4105.

15 (viii) H-1B OUTPLACEMENT FEE.—
16 Fees collected under section
17 212(n)(1)(F)(ii) of the Immigration and
18 Nationality Act, as amended by section
19 4211(d).

20 (ix) H-1B NONIMMIGRANT DEPEND-
21 ENT EMPLOYER FEES.—Fees collected
22 under section 4233(a)(2).

23 (x) L NONIMMIGRANT DEPENDENT
24 EMPLOYER FEES.—Fees collected under
25 section 4305(a)(2).

1 (xi) J-1 VISA MITIGATION FEES.—
2 Fees collected under section 281(e) of the
3 Immigration and Nationality Act, as added
4 by section 4407.

5 (xii) F-1 VISA FEES.—Fees collected
6 under section 281(f) of the Immigration
7 and Nationality Act, as added by section
8 4408.

9 (xiii) RETIREE VISA FEES.—Fees col-
10 lected under section 214(w)(1)(B) of the
11 Immigration and Nationality Act, as added
12 by section 4504(b).

13 (xiv) VISITOR VISA FEES.—Fees col-
14 lected under section 281(g) of the Immi-
15 gration and Nationality Act, as added by
16 section 4509.

17 (xv) H-2B VISA FEES.—Fees col-
18 lected under section 214(x)(5)(A) of the
19 Immigration and Nationality Act, as added
20 by section 4602(a).

21 (xvi) NONIMMIGRANTS PERFORMING
22 MAINTENANCE ON COMMON CARRIERS.—
23 Fees collected under section 214(z) of the
24 Immigration and Nationality Act, as added
25 by section 4604.

1 (xvii) X-1 VISA FEES.—Fees collected
2 under section 214(s)(6) of the Immigration
3 and Nationality Act, as added by section
4 4801.

5 (3) USE OF FUNDS.—

6 (A) INITIAL FUNDING.—Of the amounts
7 transferred to the Trust Fund pursuant to
8 paragraph (2)(A)—

9 (i) \$3,000,000,000 shall be made
10 available to the Secretary, during the 5-
11 year period beginning on the date of the
12 enactment of this Act, to carry out the
13 Comprehensive Southern Border Security
14 Strategy;

15 (ii) \$2,000,000,000 shall be made
16 available to the Secretary, during the 10-
17 year period beginning on the date of the
18 enactment of this Act, to carry out pro-
19 grams, projects, and activities rec-
20 ommended by the Commission pursuant to
21 section 4(c) to achieve and maintain the
22 border security goal specified in section
23 3(b); and

24 (iii) \$1,500,000,000 shall be made
25 available to the Secretary, during the 5-

1 year period beginning on the date of the
2 enactment of this Act, to procure and de-
3 ploy additional fencing in high-risk border
4 sectors in accordance with the Southern
5 Border Fencing Strategy established pur-
6 suant to section 5(b).

7 (B) REPAYMENT OF BORDER SECURITY
8 ENHANCEMENT EXPENSES.—The first
9 \$7,500,000,000 deposited into the Trust Fund
10 pursuant to paragraph (2)(C) shall be trans-
11 ferred to the general fund of the Treasury and
12 used for Federal budget deficit reduction.

13 (C) ONGOING FUNDING.—After the trans-
14 fer is made pursuant to subparagraph (B),
15 amounts deposited into the Trust Fund pursu-
16 ant to paragraph (2)(C) shall be made avail-
17 able, subject to the availability of funds, for the
18 following purposes:

19 (i) \$50,000,000 shall be available dur-
20 ing each of the fiscal years 2014 through
21 2018 to carry out the activities described
22 in section 1104(a)(1).

23 (ii) \$50,000,000 shall be available
24 during each of the fiscal years 2014

1 through 2018 to carry out the activities
2 described in section 1104(b).

3 (b) LIMITATION ON COLLECTION.—No fee described
4 in paragraph (2)(B) may be collected under this Act ex-
5 cept to the extent that the expenditure of the fee to pay
6 the costs of activities and services for which the fee is im-
7 posed is provided for in advance in an appropriations Act.

8 (c) RECEIPTS COLLECTED AS OFFSETTING RE-
9 CEIPTS.—Notwithstanding section 3302 of title 31,
10 United States Code, any fee collected under this Act—

11 (1) shall be credited as offsetting collections to
12 the Trust Fund;

13 (2) shall be available for expenditure only to
14 pay the costs of activities and services authorized
15 from the Trust Fund; and

16 (3) shall remain available until expended.

17 (d) DETERMINATION OF BUDGETARY EFFECTS.—

18 (1) EMERGENCY DESIGNATION FOR CONGRES-
19 SIONAL ENFORCEMENT.—In the Senate, amounts
20 appropriated by or transferred to the general fund
21 of the Treasury pursuant to this section are des-
22 ignated as an emergency requirement pursuant to
23 section 403(a) of S. Con. Res. 13 (111th Congress),
24 the concurrent resolution on the budget for fiscal
25 year 2010.

1 (2) EMERGENCY DESIGNATION FOR STATUTORY
2 PAYGO.—Amounts appropriated by or transferred to
3 the general fund of the Treasury pursuant to this
4 section are designated as an emergency requirement
5 under section 4(g) of the Statutory Pay-As-You-Go
6 Act of 2010 (Public Law 111–139; 2 U.S.C.
7 933(g)).

8 **SEC. 7. REFERENCE TO THE IMMIGRATION AND NATION-**
9 **ALITY ACT.**

10 Except as otherwise expressly provided, whenever in
11 this Act an amendment or repeal is expressed in terms
12 of an amendment to, or repeal of, a section or other provi-
13 sion, the reference shall be considered to be made to a
14 section or other provision of the Immigration and Nation-
15 ality Act (8 U.S.C. 1101 et seq.).

16 **SEC. 8. DEFINITIONS.**

17 In this Act:

18 (1) DEPARTMENT.—Except as otherwise pro-
19 vided, the term “Department” means the Depart-
20 ment of Homeland Security.

21 (2) SECRETARY.—Except as otherwise provided,
22 the term “Secretary” means the Secretary of Home-
23 land Security.

1 **TITLE I—BORDER SECURITY**

2 **SEC. 1101. DEFINITIONS.**

3 In this title:

4 (1) NORTHERN BORDER.—The term “Northern
5 border” means the international border between the
6 United States and Canada.

7 (2) RURAL, HIGH-TRAFFICKED AREAS.—The
8 term “rural, high-trafficked areas” means rural
9 areas through which drugs and undocumented aliens
10 are routinely smuggled, as designated by the Com-
11 missioner of U.S. Customs and Border Protection.

12 (3) SOUTHERN BORDER.—The term “Southern
13 border” means the international border between the
14 United States and Mexico.

15 (4) SOUTHWEST BORDER REGION.—The term
16 “Southwest border region” means the area in the
17 United States that is within 100 miles of the South-
18 ern border.

19 **SEC. 1102. ADDITIONAL U.S. CUSTOMS AND BORDER PRO-**
20 **TECTION OFFICERS.**

21 (a) IN GENERAL.—Not later than September 30,
22 2017, the Secretary shall increase the number of trained
23 U.S. Customs and Border Protection officers by 3,500,
24 compared to the number of such officers as of the date
25 of the enactment of this Act. The Secretary shall make

1 progress in increasing such number of officers during each
2 of the fiscal years 2014 through 2017.

3 (b) CONSTRUCTION.—Nothing in subsection (a) may
4 be construed to preclude the Secretary from reassigning
5 or stationing U.S. Customs and Border Protection Offi-
6 cers and U.S. Border Patrol Agents from the Northern
7 border to the Southern border.

8 (c) FUNDING.—Section 217(h)(3)(B) (8 U.S.C.
9 1187(h)(3)(B)) is amended—

10 (1) in clause (i)—

11 (A) by striking “No later than 6 months
12 after the date of enactment of the Travel Pro-
13 motion Act of 2009, the” and inserting “The”;

14 (B) in subclause (I), by striking “and” at
15 the end;

16 (C) by redesignating subclause (II) as sub-
17 clause (III); and

18 (D) by inserting after subclause (I) the fol-
19 lowing:

20 “(II) \$16 for border processing;
21 and”;

22 (2) in clause (ii), by striking “Amounts col-
23 lected under clause (i)(II)” and inserting “Amounts
24 collected under clause (i)(II) shall be deposited into
25 the Comprehensive Immigration Reform Trust Fund

1 established under section 6(a)(1) of the Border Se-
2 curity, Economic Opportunity, and Immigration
3 Modernization Act. Amounts collected under clause
4 (i)(III)’; and
5 (3) in striking clause (iii).

6 **SEC. 1103. NATIONAL GUARD SUPPORT TO SECURE THE**
7 **SOUTHERN BORDER.**

8 (a) IN GENERAL.—With the approval of the Sec-
9 retary of Defense, the Governor of a State may order any
10 units or personnel of the National Guard of such State
11 to perform operations and missions under section 502(f)
12 of title 32, United States Code, in the Southwest Border
13 region for the purposes of assisting U.S. Customs and
14 Border Protection in securing the Southern border.

15 (b) ASSIGNMENT OF OPERATIONS AND MISSIONS.—

16 (1) IN GENERAL.—National Guard units and
17 personnel deployed under subsection (a) may be as-
18 signed such operations and missions specified in sub-
19 section (c) as may be necessary to secure the South-
20 ern border.

21 (2) NATURE OF DUTY.—The duty of National
22 Guard personnel performing operations and missions
23 described in paragraph (1) shall be full-time duty
24 under title 32, United States Code.

1 (c) RANGE OF OPERATIONS AND MISSIONS.—The op-
2 erations and missions assigned under subsection (b) shall
3 include the temporary authority—

4 (1) to construct fencing, including double-layer
5 and triple-layer fencing;

6 (2) to increase ground-based mobile surveillance
7 systems;

8 (3) to deploy additional unmanned aerial sys-
9 tems and manned aircraft sufficient to maintain
10 continuous surveillance of the Southern Border;

11 (4) to deploy and provide capability for radio
12 communications interoperability between U.S. Cus-
13 toms and Border Protection and State, local, and
14 tribal law enforcement agencies;

15 (5) to construct checkpoints along the Southern
16 border to bridge the gap to long-term permanent
17 checkpoints; and

18 (6) to provide assistance to U.S. Customs and
19 Border Protection, particularly in rural, high-traf-
20 ficked areas, as designated by the Commissioner of
21 U.S. Customs and Border Protection.

22 (d) MATERIEL AND LOGISTICAL SUPPORT.—The
23 Secretary of Defense shall deploy such materiel and equip-
24 ment and logistical support as may be necessary to ensure

1 success of the operations and missions conducted by the
2 National Guard under this section.

3 (e) EXCLUSION FROM NATIONAL GUARD PER-
4 SONNEL STRENGTH LIMITATIONS.—National Guard per-
5 sonnel deployed under subsection (a) shall not be included
6 in—

7 (1) the calculation to determine compliance
8 with limits on end strength for National Guard per-
9 sonnel; or

10 (2) limits on the number of National Guard
11 personnel that may be placed on active duty for
12 operational support under section 115 of title 10,
13 United States Code.

14 **SEC. 1104. ENHANCEMENT OF EXISTING BORDER SECURITY**
15 **OPERATIONS.**

16 (a) BORDER CROSSING PROSECUTIONS.—

17 (1) IN GENERAL.—From the amounts made
18 available pursuant to the appropriations in para-
19 graph (3), funds shall be made available—

20 (A) to increase the number of border cross-
21 ing prosecutions in the Tucson Sector of the
22 Southwest Border region to up to 210 prosecu-
23 tions per day through increasing funding avail-
24 able for—

1 (i) attorneys and administrative sup-
2 port staff in the Tucson United States At-
3 torney Office;

4 (ii) support staff and interpreters in
5 the Tucson Court Clerks Office;

6 (iii) pre-trial services;

7 (iv) activities of the Tucson Federal
8 Public Defenders Office; and

9 (v) additional personnel, including
10 Deputy U.S. Marshals in the Tucson
11 United States Marshals Office to perform
12 intake, coordination, transportation, and
13 court security; and

14 (B) reimburse Federal, State, local, and
15 tribal law enforcement agencies for any deten-
16 tion costs related to the border crossing pros-
17 ecutions carried out pursuant to subparagraph
18 (A).

19 (2) ADDITIONAL MAGISTRATE JUDGES TO AS-
20 SIST WITH INCREASED CASELOAD.—The chief judge
21 of the United States District Court for the District
22 of Arizona is authorized to appoint additional full-
23 time magistrate judges, who, consistent with the
24 Constitution and laws of the United States, shall
25 have the authority to hear cases and controversies in

1 the judicial district in which the respective judges
2 are appointed.

3 (3) FUNDING.—There are authorized to be ap-
4 propriated, from the Comprehensive Immigration
5 Reform Trust Fund established under section
6 6(a)(1), such sums as may be necessary to carry out
7 this subsection.

8 (b) OPERATION STONEGARDEN.—

9 (1) IN GENERAL.—The Federal Emergency
10 Management Agency shall enhance law enforcement
11 preparedness and operational readiness along the
12 borders of the United States through Operation
13 Stonegarden. The amounts available under this
14 paragraph are in addition to any other amounts oth-
15 erwise made available for Operation Stonegarden.
16 Not less than 90 percent of the amounts made avail-
17 able under section 5(a)(3)(B)(ii) shall be allocated
18 for grants and reimbursements to law enforcement
19 agencies in the States in the Southwest Border re-
20 gion for personnel, overtime, travel, and other costs
21 related to combating illegal immigration and drug
22 smuggling in the Southwest Border region.

23 (2) FUNDING.—There are authorized to be ap-
24 propriated, from the amounts made available under

1 section 6(a)(3)(A)(i), such sums as may be nec-
2 essary to carry out this subsection.

3 (c) INFRASTRUCTURE IMPROVEMENTS.—

4 (1) BORDER PATROL STATIONS.—The Secretary
5 shall—

6 (A) construct additional Border Patrol sta-
7 tions in the Southwest Border region that U.S.
8 Border Patrol determines are needed to provide
9 full operational support in rural, high-trafficked
10 areas; and

11 (B) analyze the feasibility of creating addi-
12 tional Border Patrol sectors along the Southern
13 border to interrupt drug trafficking operations.

14 (2) FORWARD OPERATING BASES.—The Sec-
15 retary shall enhance the security of the Southwest
16 Border region by—

17 (A) establishing additional permanent for-
18 ward operating bases for the U.S. Border Pa-
19 trol, as needed;

20 (B) upgrading the existing forward oper-
21 ating bases to include modular buildings, elec-
22 tricity, and potable water; and

23 (C) ensuring that forward operating bases
24 surveil and interdict individuals entering the

1 United States unlawfully immediately after
2 such individuals cross the Southern border.

3 (3) AUTHORIZATION OF APPROPRIATIONS.—

4 There is authorized to be appropriated for each of
5 fiscal years 2014 through 2018 such sums as may
6 be necessary to carry out this subsection.

7 **SEC. 1105. BORDER SECURITY ON CERTAIN FEDERAL LAND.**

8 (a) DEFINITIONS.—In this section:

9 (1) FEDERAL LANDS.—The term “Federal
10 lands” includes all land under the control of the Sec-
11 retary concerned that is located within the South-
12 west border region in the State of Arizona along the
13 international border between the United States and
14 Mexico.

15 (2) SECRETARY CONCERNED.—The term “Sec-
16 retary concerned” means—

17 (A) with respect to land under the jurisdic-
18 tion of the Secretary of Agriculture, the Sec-
19 retary of Agriculture; and

20 (B) with respect to land under the jurisdic-
21 tion of the Secretary of the Interior, the Sec-
22 retary of the Interior.

23 (b) SUPPORT FOR BORDER SECURITY NEEDS.—To
24 achieve effective control of Federal lands—

1 (1) the Secretary concerned, notwithstanding
2 any other provision of law, shall authorize and pro-
3 vide U.S. Customs and Border Protection personnel
4 with immediate access to Federal lands for security
5 activities, including—

6 (A) routine motorized patrols; and

7 (B) the deployment of communications,
8 surveillance, and detection equipment;

9 (2) the security activities described in para-
10 graph (1) shall be conducted, to the maximum ex-
11 tent practicable, in a manner that the Secretary de-
12 termines will best protect the natural and cultural
13 resources on Federal lands; and

14 (3) the Secretary concerned may provide edu-
15 cation and training to U.S. Customs and Border
16 Protection personnel on the natural and cultural re-
17 sources present on individual Federal land units.

18 (c) PROGRAMMATIC ENVIRONMENTAL IMPACT
19 STATEMENT.—

20 (1) IN GENERAL.—After implementing sub-
21 section (b), the Secretary, in consultation with the
22 Secretaries concerned, shall prepare and publish in
23 the Federal Register a notice of intent to prepare a
24 programmatic environmental impact statement in
25 accordance with the National Environmental Policy

1 Act of 1969 (42 U.S.C. 4321 et seq.) to analyze the
2 impacts of the activities described in subsection (b).

3 (2) EFFECT ON PROCESSING APPLICATION AND
4 SPECIAL USE PERMITS.—The pending completion of
5 a programmatic environmental impact statement
6 under this section shall not result in any delay in the
7 processing or approving of applications or special
8 use permits by the Secretaries concerned for the ac-
9 tivities described in subsection (b).

10 (3) AMENDMENT OF LAND USE PLANS.—The
11 Secretaries concerned shall amend any land use
12 plans, as appropriate, upon completion of the pro-
13 grammatic environmental impact statement de-
14 scribed in subsection (b).

15 (4) SCOPE OF PROGRAMMATIC ENVIRONMENTAL
16 IMPACT STATEMENT.—The programmatic environ-
17 mental impact statement described in paragraph
18 (1)—

19 (A) may be used to advise the Secretary on
20 the impact on natural and cultural resources on
21 Federal lands; and

22 (B) shall not control, delay, or restrict ac-
23 tions by the Secretary to achieve effective con-
24 trol on Federal lands.

1 (d) INTERMINGLED STATE AND PRIVATE LAND.—

2 This section shall not apply to any private or State-owned
3 land within the boundaries of Federal lands.

4 **SEC. 1106. EQUIPMENT AND TECHNOLOGY.**

5 (a) ENHANCEMENTS.—The Commissioner of U.S.
6 Customs and Border Protection, working through U.S.
7 Border Patrol, shall—

8 (1) deploy additional mobile, video, and agent-
9 portable surveillance systems, and unarmed, un-
10 manned aerial vehicles in the Southwest Border re-
11 gion as necessary to provide 24-hour operation and
12 surveillance;

13 (2) operate unarmed unmanned aerial vehicles
14 along the Southern border for 24 hours per day and
15 for 7 days per week;

16 (3) deploy unarmed additional fixed-wing air-
17 craft and helicopters along the Southern border;

18 (4) acquire new rotocraft and make upgrades to
19 the existing helicopter fleet; and

20 (5) increase horse patrols in the Southwest
21 Border region.

22 (b) AUTHORIZATION OF APPROPRIATIONS.—In addi-
23 tion to amounts otherwise authorized to be appropriated,
24 there is authorized to be appropriated to U.S. Customs
25 and Border Protection such sums as may be necessary to

1 carry out subsection (a) during fiscal years 2014 through
2 2018.

3 **SEC. 1107. ACCESS TO EMERGENCY PERSONNEL.**

4 (a) SOUTHWEST BORDER REGION EMERGENCY COM-
5 MUNICATIONS GRANTS.—

6 (1) IN GENERAL.—The Secretary, in consulta-
7 tion with the governors of the States in the South-
8 west Border region, shall establish a 2-year grant
9 program, to be administered by the Secretary, to im-
10 prove emergency communications in the Southwest
11 Border region.

12 (2) ELIGIBILITY FOR GRANTS.—An individual
13 is eligible to receive a grant under this subsection if
14 the individual demonstrates that he or she—

15 (A) regularly resides or works in the
16 Southwest Border region;

17 (B) is at greater risk of border violence
18 due to the lack of cellular service at his or her
19 residence or business and his or her proximity
20 to the Southern border.

21 (3) USE OF GRANTS.—Grants awarded under
22 this subsection may be used to purchase satellite
23 telephone communications systems and service
24 that—

1 (A) can provide access to 9–1–1 service;
2 and

3 (B) are equipped with global positioning
4 systems.

5 (4) AUTHORIZATION OF APPROPRIATIONS.—

6 There is authorized to be appropriated such sums as
7 may be necessary to carry out the grant program es-
8 tablished under this subsection.

9 (b) INTEROPERABLE COMMUNICATIONS FOR LAW
10 ENFORCEMENT.—

11 (1) FEDERAL LAW ENFORCEMENT.—There are
12 authorized to be appropriated, to the Department,
13 the Department of Justice, and the Department of
14 the Interior, during the 5-year period beginning on
15 the date of the enactment of this Act, such sums as
16 may be necessary—

17 (A) to purchase, through a competitive
18 procurement process, P25-compliant radios,
19 which may include a multi-band option, for
20 Federal law enforcement agents working in the
21 Southwest Border region in support of the ac-
22 tivities of U.S. Customs and Border Protection
23 and U.S. Immigration and Customs Enforce-
24 ment, including law enforcement agents of the
25 Drug Enforcement Administration, the Bureau

1 of Alcohol, Tobacco, Firearms and Explosives,
2 the Department of the Interior, and the Forest
3 Service; and

4 (B) to upgrade, through a competitive pro-
5 curement process, the communications network
6 of the Department of Justice to ensure coverage
7 and capacity, particularly when immediate ac-
8 cess is needed in times of crisis, in the South-
9 west Border region for appropriate law enforce-
10 ment personnel of the Department of Justice
11 (including the Drug Enforcement Administra-
12 tion and the Bureau of Alcohol, Tobacco, Fire-
13 arms and Explosives), the Department (includ-
14 ing U.S. Immigration and Customs Enforce-
15 ment and U.S. Customs and Border Protec-
16 tion), the United States Marshals Service, other
17 Federal agencies, the State of Arizona, tribes,
18 and local governments.

19 (2) STATE AND LOCAL LAW ENFORCEMENT.—

20 (A) AUTHORIZATION OF APPROPRIA-
21 TIONS.—There is authorized to be appropriated
22 to the Department of Justice, during the 5-year
23 period beginning on the date of the enactment
24 of this Act, such sums as may be necessary to
25 purchase, through a competitive procurement

1 process, P25-compliant radios, which may in-
2 clude a multi-band option, for State and local
3 law enforcement agents working in the South-
4 west Border region.

5 (B) ACCESS TO FEDERAL SPECTRUM.—If
6 a State, tribal, or local law enforcement agency
7 in the Southwest Border region experiences an
8 emergency situation that necessitates immediate
9 communication with the Department of Justice,
10 the Department, the Department of the Inte-
11 rior, or any of their respective subagencies,
12 such law enforcement agency shall have access
13 to the spectrum assigned to such Federal agen-
14 cy for the duration of such emergency situation.

15 **SEC. 1108. SOUTHWEST BORDER REGION PROSECUTION**
16 **INITIATIVE.**

17 (a) REIMBURSEMENT TO STATE AND LOCAL PROS-
18 ECUTORS FOR FEDERALLY INITIATED CRIMINAL
19 CASES.—The Attorney General shall reimburse State,
20 county, tribal, and municipal governments for costs associ-
21 ated with the prosecution and pre-trial detention of Feder-
22 ally initiated immigration-related criminal cases declined
23 by local offices of the United States Attorneys.

24 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
25 authorized to be appropriated such sums as may be nec-

1 essary to carry out subsection (a) during fiscal years 2014
2 through 2018 .

3 **SEC. 1109. INTERAGENCY COLLABORATION.**

4 The Assistant Secretary of Defense for Research and
5 Engineering shall collaborate with the Under Secretary of
6 Homeland Security for Science and Technology to identify
7 equipment and technology used by the Department of De-
8 fense that could be used by U.S. Customs and Border Pro-
9 tection to improve the security of the Southern border
10 by—

- 11 (1) detecting border tunnels;
- 12 (2) detecting the use of ultralight aircraft;
- 13 (3) enhancing wide aerial surveillance; and
- 14 (4) otherwise improving the enforcement of
- 15 such border.

16 **SEC. 1110. SCAAP REAUTHORIZATION.**

17 Section 241(i)(5)(C) (8 U.S.C. 1231(i)(5)) is amend-
18 ed by striking “2011” and inserting “2015”.

19 **SEC. 1111. USE OF FORCE.**

20 Not later than 180 days after the date of the enact-
21 ment of this Act, the Secretary, in consultation with the
22 Assistant Attorney General for the Civil Rights Division
23 of the Department of Justice, shall issue policies gov-
24 erning the use of force by all Department personnel that—

1 (1) require all Department personnel to report
2 each use of force; and

3 (2) establish procedures for—

4 (A) accepting and investigating complaints
5 regarding the use of force by Department per-
6 sonnel;

7 (B) disciplining Department personnel who
8 violate any law or Department policy relating to
9 the use of force; and

10 (C) reviewing all uses of force by Depart-
11 ment personnel to determine whether the use of
12 force—

13 (i) complied with Department policy;

14 or

15 (ii) demonstrates the need for changes
16 in policy, training, or equipment.

17 **SEC. 1112. TRAINING FOR BORDER SECURITY AND IMMI-**
18 **GRATION ENFORCEMENT OFFICERS.**

19 (a) IN GENERAL.—The Secretary shall ensure that
20 U.S. Customs and Border Protection officers, U.S. Border
21 Patrol agents, U.S. Immigration and Customs Enforce-
22 ment officers and agents, United States Air and Marine
23 Division agents, and agriculture specialists stationed with-
24 in 100 miles of any land or marine border of the United
25 States or at any United States port of entry receive appro-

1 piate training, which shall be prepared in collaboration
2 with the Assistant Attorney General for the Civil Rights
3 Division of the Department of Justice, in—

4 (1) identifying and detecting fraudulent travel
5 documents;

6 (2) civil, constitutional, human, and privacy
7 rights of individuals;

8 (3) the scope of enforcement authorities, includ-
9 ing interrogations, stops, searches, seizures, arrests,
10 and detentions;

11 (4) the use of force policies issued by the Sec-
12 retary pursuant to section 1111;

13 (5) immigration laws, including screening, iden-
14 tifying, and addressing vulnerable populations, such
15 as children, victims of crime and human trafficking,
16 and individuals fleeing persecution or torture;

17 (6) social and cultural sensitivity toward border
18 communities;

19 (7) the impact of border operations on commu-
20 nities; and

21 (8) any particular environmental concerns in a
22 particular area.

23 (b) TRAINING FOR BORDER COMMUNITY LIAISON
24 OFFICERS.—The Secretary shall ensure that border com-
25 munities liaison officers in Border Patrol sectors along the

1 international borders between the United States and Mex-
2 ico and between the United States and Canada receive
3 training to better—

4 (1) act as a liaison between border communities
5 and the Office for Civil Rights and Civil Liberties of
6 the Department and the Civil Rights Division of the
7 Department of Justice;

8 (2) foster and institutionalize consultation with
9 border communities;

10 (3) consult with border communities on Depart-
11 ment programs, policies, strategies, and directives;
12 and

13 (4) receive Department performance assess-
14 ments from border communities.

15 **SEC. 1113. DEPARTMENT OF HOMELAND SECURITY BOR-**
16 **DER OVERSIGHT TASK FORCE.**

17 (a) ESTABLISHMENT.—

18 (1) IN GENERAL.—There is established an inde-
19 pendent task force, which shall be known as the De-
20 partment of Homeland Security Border Oversight
21 Task Force (referred to in this section as the “DHS
22 Task Force”).

23 (2) DUTIES.—The DHS Task Force shall—

24 (A) review and make recommendations re-
25 garding immigration and border enforcement

1 policies, strategies, and programs that take into
2 consideration their impact on border commu-
3 nities;

4 (B) recommend ways in which the Border
5 Communities Liaison Offices can strengthen re-
6 lations and collaboration between communities
7 in the border regions and the Department, the
8 Department of Justice, and other Federal agen-
9 cies that carry out such policies, strategies, and
10 programs;

11 (C) evaluate how the policies, strategies,
12 and programs of Federal agencies operating
13 along the international borders between the
14 United States and Mexico and between the
15 United States and Canada protect the due proc-
16 ess, civil, and human rights of border residents,
17 visitors, and migrants at and near such borders;
18 and

19 (D) evaluate and make recommendations
20 regarding the training of border enforcement
21 personnel described in section 1112.

22 (3) MEMBERSHIP.—

23 (A) IN GENERAL.—The DHS Task Force
24 shall be composed of 26 members, appointed by
25 the President, who have expertise in migration,

1 local crime indices, civil and human rights,
2 community relations, cross-border trade and
3 commerce, quality of life indicators, or other
4 pertinent experience, of whom—

5 (i) 11 members shall be from the
6 Northern border region and shall include—

7 (I) 2 local government elected of-
8 ficials;

9 (II) 2 local law enforcement offi-
10 cial;

11 (III) 2 civil rights advocates;

12 (IV) 1 business representative;

13 (V) 1 higher education represent-
14 ative;

15 (VI) 1 representative of a faith
16 community; and

17 (VII) 2 representatives of U.S.
18 Border Patrol; and

19 (ii) 15 members shall be from the
20 Southern border region and include—

21 (I) 3 local government elected of-
22 ficials;

23 (II) 3 local law enforcement offi-
24 cials;

25 (III) 3 civil rights advocates;

- 1 (IV) 2 business representatives;
2 (V) 1 higher education represent-
3 ative;
4 (VI) 1 representative of a faith
5 community; and
6 (VII) 2 representatives of U.S.
7 Border Patrol.

8 (B) TERM OF SERVICE.—Members of the
9 Task Force shall be appointed for the shorter
10 of—

- 11 (i) 3 years; or
12 (ii) the life of the DHS Task Force.

13 (C) CHAIR, VICE CHAIR.—The members of
14 the DHS Task Force shall elect a Chair and a
15 Vice Chair from among its members, who shall
16 serve in such capacities for the life of the DHS
17 Task Force or until removed by the majority
18 vote of at least 14 members.

19 (b) OPERATIONS.—

20 (1) HEARINGS.—The DHS Task Force may,
21 for the purpose of carrying out its duties, hold hear-
22 ings, sit and act, take testimony, receive evidence,
23 and administer oaths.

24 (2) RECOMMENDATIONS.—The DHS Task
25 Force may make findings or recommendations to the

1 Secretary related to the duties described in sub-
2 section (a)(2).

3 (3) RESPONSE.—Not later than 180 days after
4 receiving the findings and recommendations from
5 the DHS Task Force under paragraph (2), the Sec-
6 retary shall issue a response that describes how the
7 Department has addressed, or will address, such
8 findings and recommendations. If the Secretary dis-
9 agrees with any finding of the DHS Task Force, the
10 Secretary shall provide an explanation for the dis-
11 agreement.

12 (4) INFORMATION FROM FEDERAL AGENCIES.—
13 The Chair, or 16 members of the DHS Task Force,
14 may request statistics relating to the duties de-
15 scribed in subsection (a)(2) directly from any Fed-
16 eral agency, which shall, to the extent authorized by
17 law, furnish such information, suggestions, esti-
18 mates, and statistics directly to the DHS Task
19 Force.

20 (5) COMPENSATION.—Members of the DHS
21 Task Force shall serve without pay, but shall be re-
22 imbursed for reasonable travel and subsistence ex-
23 penses incurred in the performance of their duties.

24 (c) REPORT.—Not later than 2 years after its first
25 meeting, the DHS Task Force shall submit a final report

1 to the President, Congress, and the Secretary that con-
2 tains—

3 (1) findings with respect to the duties of the
4 DHS Task Force; and

5 (2) recommendations regarding border and im-
6 migration enforcement policies, strategies, and pro-
7 grams, including—

8 (A) a recommendation as to whether the
9 DHS Task Force should continue to operate;
10 and

11 (B) a description of any duties the DHS
12 Task Force should be responsible for after the
13 termination date described in subsection (e).

14 (d) **AUTHORIZATION OF APPROPRIATIONS.**—There
15 are authorized to be appropriated such sums as may be
16 necessary to carry out this section for each of the fiscal
17 years 2014 through 2017.

18 (e) **SUNSET.**—The DHS Task Force shall terminate
19 operations 60 days after the date on which the DHS Task
20 Force submits the report described in subsection (c).

21 **SEC. 1114. IMMIGRATION OMBUDSMAN.**

22 (a) **IN GENERAL.**—Section 452 of the Homeland Se-
23 curity Act (6 U.S.C. 272) is amended—

24 (1) by amending the section heading to read as
25 follows:

1 **“SEC. 452. DEPARTMENT OF HOMELAND SECURITY IMMI-**
2 **GRATION OMBUDSMAN.”;**

3 (2) in subsection (a), by striking “Citizenship
4 and Immigration Services Ombudsman” and insert-
5 ing “DHS Immigration Ombudsman”;

6 (3) in subsection (c)(2), by striking “Director
7 of the Bureau of Citizenship and Immigration Serv-
8 ices” and inserting “Director, U.S. Citizenship and
9 Immigration Services, the Assistant Secretary, U.S.
10 Immigration and Customs Enforcement, the Com-
11 missioner, U.S. Customs and Border Protection”;

12 (4) in subsections (d)(4) and (f), by striking
13 “Director of the Bureau of Citizenship and Immi-
14 gration Services” each place such term appears and
15 inserting “Director, U.S. Citizenship and Immigra-
16 tion Services, the Assistant Secretary, U.S. Immi-
17 gration and Customs Enforcement, and the Commis-
18 sioner, U.S. Customs and Border Protection”;

19 (5) in subsection (f), by striking “director”
20 each place such term appears and inserting “offi-
21 cial”; and

22 (6) by striking “the Bureau of Citizenship and
23 Immigration Services” each place it appears and in-
24 serting “U.S. Citizenship and Immigration Services,
25 U.S. Immigration and Customs Enforcement, or
26 U.S. Customs and Border Protection”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 in section 1 of the Homeland Security Act (6 U.S.C. 101
3 et seq.) is amended by striking the item relating to section
4 452 and inserting the following:

“Sec. 452. Department of Homeland Security Immigration Ombudsman.”.

5 **SEC. 1115. REPORTS.**

6 (a) REPORT ON CERTAIN BORDER MATTERS.—The
7 Secretary shall submit a report to the Committee on
8 Homeland Security and Governmental Affairs of the Sen-
9 ate and the Committee on Homeland Security of the
10 House of Representatives that sets forth—

11 (1) the effectiveness rate (as defined in section
12 2(a)(4)) for each Border Patrol sector along the
13 Northern border and the Southern border;

14 (2) the number of miles along the Southern
15 border that is under persistent surveillance;

16 (3) the monthly wait times per passenger, in-
17 cluding data on averages and peaks, for crossing the
18 Southern border, and the staffing of such border
19 crossings; and

20 (4) the allocations at each port of entry along
21 the Southern border.

22 (b) REPORT ON INTERAGENCY COLLABORATION.—
23 The Under Secretary of Defense for Acquisition, Tech-
24 nology, and Logistics and the Under Secretary of Home-
25 land Security for Science and Technology shall jointly sub-

1 mit a report on the results of the interagency collaboration
2 under section 1109 to—

3 (1) the Committee on Armed Services of the
4 Senate;

5 (2) the Committee on Homeland Security and
6 Governmental Affairs of the Senate;

7 (3) the Committee on Armed Services of the
8 House of Representatives; and

9 (4) the Committee on Homeland Security of the
10 House of Representatives.

11 **SEC. 1116. SEVERABILITY AND DELEGATION.**

12 (a) SEVERABILITY.—If any provision of this Act or
13 any amendment made by this Act, or any application of
14 such provision or amendment to any person or cir-
15 cumstance, is held to be unconstitutional, the remainder
16 of the provisions of this Act and the amendments made
17 by this Act and the application of the provision or amend-
18 ment to any other person or circumstance shall not be af-
19 fected.

20 (b) DELEGATION.—The Secretary may delegate any
21 authority provided to the Secretary under this Act or an
22 amendment made by this Act to the Secretary of Agri-
23 culture, the Attorney General, the Secretary of Defense,
24 the Secretary of Health and Human Services, the Sec-
25 retary of State, or the Commissioner of Social Security.

1 **TITLE II—IMMIGRANT VISAS**
2 **Subtitle A—Registration and Ad-**
3 **justment of Registered Provi-**
4 **sional Immigrants**

5 **SEC. 2101. REGISTERED PROVISIONAL IMMIGRANT STATUS.**

6 (a) AUTHORIZATION.—Chapter 5 of title II (8 U.S.C.
7 1255 et seq.) is amended by inserting after section 245A
8 the following:

9 **“SEC. 245B. ADJUSTMENT OF STATUS OF ELIGIBLE EN-**
10 **TRANS BEFORE DECEMBER 31, 2011, TO**
11 **THAT OF REGISTERED PROVISIONAL IMMI-**
12 **GRANT.**

13 “(a) IN GENERAL.—Notwithstanding any other pro-
14 vision of law, the Secretary of Homeland Security (re-
15 ferred to in this section and in sections 245C through
16 245F as the ‘Secretary’), after conducting the national se-
17 curity and law enforcement clearances required under sub-
18 section (c)(8), may grant registered provisional immigrant
19 status to an alien who—

20 “(1) meets the eligibility requirements set forth
21 in subsection (b);

22 “(2) submits a completed application before the
23 end of the period set forth in subsection (c)(3); and

1 “(3) has paid the fee required under subsection
2 (c)(10)(A) and the penalty required under sub-
3 section (c)(10)(C), if applicable.

4 “(b) ELIGIBILITY REQUIREMENTS.—

5 “(1) IN GENERAL.—An alien is not eligible for
6 registered provisional immigrant status unless the
7 alien establishes, by a preponderance of the evidence,
8 that the alien meets the requirements set forth in
9 this subsection.

10 “(2) PHYSICAL PRESENCE.—

11 “(A) IN GENERAL.—The alien—

12 “(i) shall be physically present in the
13 United States on the date on which the
14 alien submits an application for registered
15 provisional immigrant status;

16 “(ii) shall have been physically
17 present in the United States on or before
18 December 31, 2011; and

19 “(iii) shall have maintained contin-
20 uous physical presence in the United
21 States from December 31, 2011, until the
22 date on which the alien is granted status
23 as a registered provisional immigrant
24 under this section.

25 “(B) BREAK IN PHYSICAL PRESENCE.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), an alien who is absent
3 from the United States without authoriza-
4 tion after the date of the enactment of this
5 section does not meet the continuous phys-
6 ical presence requirement set forth in sub-
7 paragraph (A)(iii).

8 “(ii) EXCEPTION.—An alien who de-
9 parted from the United States after De-
10 cember 31, 2011 will not be considered to
11 have failed to maintain continuous pres-
12 ence in the United States if the alien’s ab-
13 sences from the United States are brief,
14 casual, and innocent whether or not such
15 absences were authorized by the Secretary.

16 “(3) GROUNDS FOR INELIGIBILITY.—

17 “(A) IN GENERAL.—Except as provided in
18 subparagraph (B), an alien is ineligible for reg-
19 istered provisional immigrant status if the Sec-
20 retary determines that the alien—

21 “(i) has a conviction for—

22 “(I) an offense classified as a fel-
23 ony in the convicting jurisdiction
24 (other than a State or local offense
25 for which an essential element was the

1 alien's immigration status, or a viola-
2 tion of this Act);

3 “(II) an aggravated felony (as
4 defined in section 101(a)(43) at the
5 time of the conviction);

6 “(III) 3 or more misdemeanor of-
7 fenses (other than minor traffic of-
8 fenses or State or local offenses for
9 which an essential element was the
10 alien's immigration status, or a viola-
11 tion of this Act) if the alien was con-
12 victed on different dates for each of
13 the 3 offenses;

14 “(IV) any offense under foreign
15 law, except for a purely political of-
16 fense, which, if the offense had been
17 committed in the United States,
18 would render the alien inadmissible
19 under section 212(a) (excluding the
20 paragraphs set forth in clause (ii)) or
21 removable under section 237(a), ex-
22 cept as provided in paragraph (3) of
23 section 237(a);

24 “(V) unlawful voting (as defined
25 in section 237(a)(6));

1 “(ii) is inadmissible under section
2 212(a), except that in determining an
3 alien’s inadmissibility—

4 “(I) paragraphs (4), (5), (7), and
5 (9)(B) of section 212(a) shall not
6 apply;

7 “(II) subparagraphs (A), (C),
8 (D), (F), and (G) of section 212(a)(6)
9 and paragraphs (9)(C) and (10)(B) of
10 section 212(a) shall not apply unless
11 based on the act of unlawfully enter-
12 ing the United States after the date
13 of the enactment of the Border Secu-
14 rity, Economic Opportunity, and Im-
15 migration Modernization Act; and

16 “(III) paragraphs (6)(B) and
17 (9)(A) of section 212(a) shall not
18 apply unless the relevant conduct
19 began on or after the date on which
20 the alien files an application for reg-
21 istered provisional immigrant status
22 under this section;

23 “(iii) is an alien who the Secretary
24 knows or has reasonable grounds to be-
25 lieve, is engaged in or is likely to engage

1 after entry in any terrorist activity (as de-
2 fined in section 212(a)(3)(B)(iv)); or

3 “(iv) was, on the date on which this
4 Act was introduced in the Senate—

5 “(I) an alien lawfully admitted
6 for permanent residence;

7 “(II) an alien admitted as a ref-
8 ugee under section 207 or granted
9 asylum under section 208; or

10 “(III) an alien who, according to
11 the records of the Secretary or the
12 Secretary of State, is lawfully present
13 in the United States in any non-
14 immigrant status (other than an alien
15 considered to be a nonimmigrant sole-
16 ly due to the application of section
17 244(f)(4) or the amendment made by
18 section 702 of the Consolidated Nat-
19 ural Resources Act of 2008 (Public
20 Law 110–229)), notwithstanding any
21 unauthorized employment or other
22 violation of nonimmigrant status.

23 “(B) WAIVER.—

24 “(i) IN GENERAL.—The Secretary
25 may waive the application of subparagraph

1 (A)(i)(III) or any provision of section
2 212(a) that is not listed in clause (ii) on
3 behalf of an alien for humanitarian pur-
4 poses, to ensure family unity, or if such a
5 waiver is otherwise in the public interest.
6 Any discretionary authority to waive
7 grounds of inadmissibility under section
8 212(a) conferred under any other provision
9 of this Act shall apply equally to aliens
10 seeking registered provisional status under
11 this section.

12 “(ii) EXCEPTIONS.—The discretionary
13 authority under clause (i) may not be used
14 to waive—

15 “(I) subparagraph (B), (C),
16 (D)(ii), (E), (G), (H), or (I) of section
17 212(a)(2);

18 “(II) section 212(a)(3);

19 “(III) subparagraph (A), (C),
20 (D), or (E) of section 212(a)(10); or

21 “(IV) with respect to misrepre-
22 sentations relating to the application
23 for registered provisional immigrant
24 status, section 212(a)(6)(C)(i).

1 “(C) CONVICTION EXPLAINED.—For pur-
2 poses of this paragraph, the term ‘conviction’
3 does not include a judgment that has been ex-
4 punged, set aside, or the equivalent.

5 “(D) RULE OF CONSTRUCTION.—Nothing
6 in this paragraph may be construed to require
7 the Secretary to commence removal proceedings
8 against an alien.

9 “(4) APPLICABILITY OF OTHER PROVISIONS.—
10 Sections 208(d)(6) and 240B(d) shall not apply to
11 any alien filing an application for registered provi-
12 sional immigrant status under this section.

13 “(5) DEPENDENT SPOUSE AND CHILDREN.—

14 “(A) IN GENERAL.—Notwithstanding any
15 other provision of law, the Secretary may clas-
16 sify the spouse or child of a registered provi-
17 sional immigrant as a registered provisional im-
18 migrant dependent if the spouse or child—

19 “(i) is physically present in the
20 United States—

21 “(I) on the date on which the
22 registered provisional immigrant is
23 granted such status; and

24 “(II) on or before December 31,
25 2012;

1 “(ii) meets all of the eligibility re-
2 quirements set forth in this subsection,
3 other than the requirements of clause (ii)
4 or (iii) of paragraph (2)(A).

5 “(B) EFFECT OF TERMINATION OF LEGAL
6 RELATIONSHIP OR DOMESTIC VIOLENCE.—If
7 the spousal or parental relationship between an
8 alien who is granted registered provisional im-
9 migrant status under this section and the
10 alien’s spouse or child is terminated due to
11 death or divorce or the spouse or child has been
12 battered or subjected to extreme cruelty by the
13 alien (regardless of whether the legal relation-
14 ship terminates), the spouse or child may apply
15 for classification as a registered provisional im-
16 migrant.

17 “(C) EFFECT OF DISQUALIFICATION OF
18 PARENT.—Notwithstanding subsection (c)(3), if
19 the application of a spouse or parent for reg-
20 istered provisional immigrant status is termi-
21 nated or revoked, the husband, wife, or child of
22 that spouse or parent shall be eligible to apply
23 for registered provisional immigrant status
24 independent of the parent or spouse.

25 “(c) APPLICATION PROCEDURES.—

1 “(1) IN GENERAL.—An alien, or the dependent
2 spouse or child of such alien, who meets the eligi-
3 bility requirements set forth in subsection (b) may
4 apply for status as a registered provisional immi-
5 grant or a registered provisional immigrant depend-
6 ent, as applicable, by submitting a completed appli-
7 cation form to the Secretary during the application
8 period set forth in paragraph (3), in accordance with
9 the final rule promulgated by the Secretary under
10 the Border Security, Economic Opportunity, and
11 Immigration Modernization Act. An applicant for
12 registered provisional immigrant status shall be
13 treated as an applicant for admission.

14 “(2) PAYMENT OF TAXES.—

15 “(A) IN GENERAL.—An alien may not file
16 an application for registered provisional immi-
17 grant status under paragraph (1) unless the ap-
18 plicant has satisfied any applicable Federal tax
19 liability.

20 “(B) DEFINITION OF APPLICABLE FED-
21 ERAL TAX LIABILITY.—In this paragraph, the
22 term ‘applicable Federal tax liability’ means all
23 Federal income taxes assessed in accordance
24 with section 6203 of the Internal Revenue Code
25 of 1986.

1 “(C) DEMONSTRATION OF COMPLIANCE.—

2 An applicant may demonstrate compliance with
3 this paragraph by submitting appropriate docu-
4 mentation, in accordance with regulations pro-
5 mulgated by the Secretary, in consultation with
6 the Secretary of the Treasury.

7 “(3) APPLICATION PERIOD.—

8 “(A) INITIAL PERIOD.—Except as provided
9 in subparagraph (B), the Secretary may only
10 accept applications for registered provisional
11 immigrant status from aliens in the United
12 States during the 1-year period beginning on
13 the date on which the final rule is published in
14 the Federal Register pursuant to paragraph
15 (1).

16 “(B) EXTENSION.—If the Secretary deter-
17 mines, during the initial period described in
18 subparagraph (A), that additional time is re-
19 quired to process applications for registered
20 provisional immigrant status or for other good
21 cause, the Secretary may extend the period for
22 accepting applications for such status for an
23 additional 18 months.

24 “(4) APPLICATION FORM.—

“(A) REQUIRED INFORMATION.—The application form referred to in paragraph (1) shall collect such information as the Secretary determines necessary and appropriate.

5 “(B) FAMILY APPLICATION.—The Sec-
6 retary shall establish a process through which
7 an alien may submit a single application under
8 this section on behalf of the alien, his or her
9 spouse, and his or her children, who are resid-
10 ing in the United States.

“(C) INTERVIEW.—The Secretary may interview applicants for registered provisional immigrant status under this section to determine whether they meet the eligibility requirements set forth in subsection (b).

“(5) ALIENS APPREHENDED BEFORE OR DURING THE APPLICATION PERIOD.—If an alien who is apprehended during the period beginning on the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act and the end of the application period described in paragraph (3) appears *prima facie* eligible for registered provisional immigrant status, to the satisfaction of the Secretary, the Secretary—

1 “(A) shall provide the alien with a reason-
2 able opportunity to file an application under
3 this section during such application period; and

4 “(B) may not remove the individual until
5 a final administrative determination is made on
6 the application.

7 “(6) ELIGIBILITY AFTER DEPARTURE.—

8 “(A) IN GENERAL.—An alien who departed
9 from the United States while subject to an
10 order of exclusion, deportation, or removal, or
11 pursuant to an order of voluntary departure
12 and who is outside of the United States, or who
13 has reentered the United States illegally after
14 December 31, 2011 without receiving the Sec-
15 retary’s consent to reapply for admission under
16 section 212(a)(9), shall not be eligible to file an
17 application for registered provisional immigrant
18 status.

19 “(B) WAIVER.—The Secretary, in the Sec-
20 retary’s sole and unreviewable discretion, may
21 waive the application of subparagraph (A) on
22 behalf of an alien if the alien—

23 “(i) is the spouse or child of a United
24 States citizen or lawful permanent resi-
25 dent;

1 “(ii) is the parent of a child who is a
2 United States citizen or lawful permanent
3 resident;

4 “(iii) meets the requirements set forth
5 in clauses (ii) and (iii) of section
6 245D(b)(1)(A); or

7 “(iv) meets the requirements set forth
8 in section 245D(b)(1)(A)(ii), is 16 years or
9 older on the date on which the alien ap-
10 plies for registered provisional immigrant
11 status, and was physically present in the
12 United States for an aggregate period of
13 not less than 3 years during the 6-year pe-
14 riod immediately preceding the date of the
15 enactment of the Border Security, Eco-
16 nomic Opportunity, and Immigration Mod-
17 ernization Act.

18 “(C) ELIGIBILITY.—Notwithstanding sub-
19 section (b)(2), section 241(a)(5), or a prior
20 order of exclusion, deportation, or removal, an
21 alien described in subparagraph (B) who is oth-
22 erwise eligible for registered provisional immi-
23 grant status may file an application for such
24 status.

1 “(7) SUSPENSION OF REMOVAL DURING APPLI-
2 CATION PERIOD.—

3 “(A) PROTECTION FROM DETENTION OR
4 REMOVAL.—A registered provisional immigrant
5 may not be detained by the Secretary or re-
6 moved from the United States, unless—

7 “(i) the Secretary determines that—

8 “(I) such alien is, or has become,
9 ineligible for registered provisional im-
10 migrant status under subsection
11 (b)(3); or

12 “(II) the alien’s registered provi-
13 sional immigrant status has been re-
14 voked under subsection (d)(2).

15 “(B) ALIENS IN REMOVAL PRO-
16 CEEDINGS.—Notwithstanding any other provi-
17 sion of this Act—

18 “(i) if the Secretary determines that
19 an alien, during the period beginning on
20 the date of the enactment of this section
21 and ending on the last day of the applica-
22 tion period described in paragraph (3), is
23 in removal, deportation, or exclusion pro-
24 ceedings before the Executive Office for
25 Immigration Review and is prima facie eli-

1 gible for registered provisional immigrant
2 status under this section—

3 “(I) the Secretary shall provide
4 the alien with the opportunity to file
5 an application for such status; and

6 “(II) upon motion by the Sec-
7 retary and with the consent of the
8 alien or upon motion by the alien, the
9 Executive Office for Immigration Re-
10 view shall—

11 “(aa) terminate such pro-
12 ceedings without prejudice to fu-
13 ture proceedings on any basis;
14 and

15 “(bb) provide the alien a
16 reasonable opportunity to apply
17 for such status; and

18 “(ii) if the Executive Office for Immi-
19 gration Review determines that an alien,
20 during the application period described in
21 paragraph (3), is in removal, deportation,
22 or exclusion proceedings before the Execu-
23 tive Office for Immigration Review and is
24 prima facie eligible for registered provi-

1 sional immigrant status under this sec-
2 tion—

3 “(I) the Executive Office of Im-
4 migration Review shall notify the Sec-
5 retary of such determination; and

6 “(II) if the Secretary does not
7 dispute the determination of prima
8 facie eligibility within 7 days after
9 such notification, the Executive Office
10 for Immigration Review, upon consent
11 of the alien, shall—

12 “(aa) terminate such pro-
13 ceedings without prejudice to fu-
14 ture proceedings on any basis;
15 and

16 “(bb) permit the alien a rea-
17 sonable opportunity to apply for
18 such status.

19 “(C) TREATMENT OF CERTAIN ALIENS.—

20 “(i) IN GENERAL.—If an alien who
21 meets the eligibility requirements set forth
22 in subsection (b) is present in the United
23 States and has been ordered excluded, de-
24 ported, or removed, or ordered to depart

1 voluntarily from the United States under
2 any provision of this Act—

3 “(I) notwithstanding such order
4 or section 241(a)(5), the alien may
5 apply for registered provisional immi-
6 grant status under this section; and

7 “(II) if the alien is granted such
8 status, the alien shall file a motion to
9 reopen the exclusion, deportation, re-
10 moval, or voluntary departure order,
11 which motion shall be granted unless
12 1 or more of the grounds of ineligi-
13 bility is established by clear and con-
14 vincing evidence.

15 “(ii) LIMITATIONS ON MOTIONS TO
16 REOPEN.—The limitations on motions to
17 reopen set forth in section 240(c)(7) shall
18 not apply to motions filed under clause
19 (i)(II).

20 “(D) PERIOD PENDING ADJUDICATION OF
21 APPLICATION.—

22 “(i) IN GENERAL.—During the period
23 beginning on the date on which an alien
24 applies for registered provisional immi-
25 grant status under paragraph (1) and the

1 date on which the Secretary makes a final
2 decision regarding such application, the
3 alien—

4 “(I) may receive advance parole
5 to reenter the United States if urgent
6 humanitarian circumstances compel
7 such travel;

8 “(II) may not be detained by the
9 Secretary or removed from the United
10 States unless the Secretary makes a
11 prima facie determination that such
12 alien is, or has become, ineligible for
13 registered provisional immigrant sta-
14 tus under subsection (b)(3);

15 “(III) shall not be considered un-
16 lawfully present for purposes of sec-
17 tion 212(a)(9)(B); and

18 “(IV) shall not be considered an
19 unauthorized alien (as defined in sec-
20 tion 274A(h)(3)).

21 “(ii) EVIDENCE OF APPLICATION FIL-
22 ING.—As soon as practicable after receiv-
23 ing each application for registered provi-
24 sional immigrant status, the Secretary
25 shall provide the applicant with a docu-

1 ment acknowledging the receipt of such ap-
2 plication.

3 “(iii) CONTINUING EMPLOYMENT.—

4 An employer who knows that an alien em-
5 ployee is an applicant for registered provi-
6 sional immigrant status or will apply for
7 such status once the application period
8 commences is not in violation of section
9 274A(a)(2) if the employer continues to
10 employ the alien pending the adjudication
11 of the alien employee’s application.

12 “(iv) EFFECT OF DEPARTURE.—Sec-
13 tion 101(g) shall not apply to an alien
14 granted—

15 “(I) advance parole under clause
16 (i)(I) to reenter the United States; or

17 “(II) registered provisional immi-
18 grant status.

19 “(8) SECURITY AND LAW ENFORCEMENT
20 CLEARANCES.—

21 “(A) BIOMETRIC AND BIOGRAPHIC
22 DATA.—The Secretary may not grant registered
23 provisional immigrant status to an alien or an
24 alien dependent spouse or child under this sec-
25 tion unless such alien submits biometric and

1 biographic data in accordance with procedures
2 established by the Secretary.

3 “(B) ALTERNATIVE PROCEDURES.—The
4 Secretary shall provide an alternative procedure
5 for applicants who cannot provide the biometric
6 data required under subparagraph (A) because
7 of a physical impairment.

8 “(C) CLEARANCES.—

9 “(i) DATA COLLECTION.—The Sec-
10 retary shall collect, from each alien apply-
11 ing for status under this section, biometric,
12 biographic, and other data that the Sec-
13 retary determines to be appropriate—

14 “(I) to conduct national security
15 and law enforcement clearances; and

16 “(II) to determine whether there
17 are any national security or law en-
18 forcement factors that would render
19 an alien ineligible for such status.

20 “(ii) PREREQUISITE.—The required
21 clearances described in clause (i)(I) shall
22 be completed before the alien may be
23 granted registered provisional immigrant
24 status.

25 “(9) DURATION OF STATUS AND EXTENSION.—

1 “(A) IN GENERAL.—The initial period of
2 authorized admission for a registered provi-
3 sional immigrant—

4 “(i) shall remain valid for 6 years un-
5 less revoked pursuant to subsection (d)(2);
6 and

7 “(ii) may be extended for additional
8 6-year terms if—

9 “(I) the alien remains eligible for
10 registered provisional immigrant sta-
11 tus;

12 “(II) the alien meets the employ-
13 ment requirements set forth in sub-
14 paragraph (B); and

15 “(III) such status was not re-
16 voked by the Secretary for any reason.

17 “(B) EMPLOYMENT OR EDUCATION RE-
18 QUIREMENT.—Except as provided in subpara-
19 graphs (D) and (E) of section 245C(b)(3), an
20 alien may not be granted an extension of reg-
21 istered provisional immigrant status under this
22 paragraph unless the alien establishes that,
23 during the alien’s period of status as a reg-
24 istered provisional immigrant, the alien—

1 “(i)(I) was regularly employed
2 throughout the period of admission as a
3 registered provisional immigrant, allowing
4 for brief periods lasting not more than 60
5 days; and

6 “(II) is not likely to become a public
7 charge (as determined under section
8 212(a)(4)); or

9 “(ii) is able to demonstrate average
10 income or resources that are not less than
11 100 percent of the Federal poverty level
12 throughout the period of admission as a
13 registered provisional immigrant.

14 “(C) PAYMENT OF TAXES.—An applicant
15 may not be granted an extension of registered
16 provisional immigrant status under subpara-
17 graph (A)(ii) unless the applicant has satisfied
18 any applicable Federal tax liability in accord-
19 ance with paragraph (2).

20 “(10) FEES AND PENALTIES.—

21 “(A) STANDARD PROCESSING FEE.—

22 “(i) IN GENERAL.—Aliens who are 16
23 years of age or older and are applying for
24 registered provisional immigrant status
25 under paragraph (1), or for an extension

1 of such status under paragraph (9)(A)(ii),
2 shall pay a processing fee to the Depart-
3 ment of Homeland Security in an amount
4 determined by the Secretary.

5 “(ii) RECOVERY OF COSTS.—The
6 processing fee authorized under clause (i)
7 shall be set at a level that is sufficient to
8 recover the full costs of processing the ap-
9 plication, including any costs incurred—

10 “(I) to adjudicate the application;

11 “(II) to take and process bio-
12 metrics;

13 “(III) to perform national secu-
14 rity and criminal checks, including ad-
15 judication;

16 “(IV) to prevent and investigate
17 fraud; and

18 “(V) to administer the collection
19 of such fee.

20 “(iii) AUTHORITY TO LIMIT FEES.—
21 The Secretary, by regulation, may—

22 “(I) limit the maximum proc-
23 essing fee payable under this subpara-
24 graph by a family, including spouses

1 and unmarried children younger than
2 21 years of age; and

3 “(II) exempt defined classes of
4 individuals, including individuals de-
5 scribed in section 245B(c)(13), from
6 the payment of the fee authorized
7 under clause (i).

8 “(B) DEPOSIT AND USE OF PROCESSING
9 FEES.—Fees collected under subparagraph
10 (A)(i)—

11 “(i) shall be deposited into the Immi-
12 gration Examinations Fee Account pursu-
13 ant to section 286(m); and

14 “(ii) shall remain available until ex-
15 pended pursuant to section 286(n).

16 “(C) PENALTY.—

17 “(i) PAYMENT.—In addition to the
18 processing fee required under subpara-
19 graph (A), aliens not described in section
20 245D(b)(A)(ii) who are 21 years of age or
21 older and are filing an application under
22 this subsection shall pay a \$1,000 penalty
23 to the Department of Homeland Security.

1 “(ii) INSTALLMENTS.—The Secretary
2 shall establish a process for collecting pay-
3 ments required under clause (i) that—

4 “(I) requires the alien to pay
5 \$500 in conjunction with the submis-
6 sion of an application under this sub-
7 section for registered provisional im-
8 migrant status; and

9 “(II) allows the remaining \$500
10 to be paid in periodic installments
11 that shall be completed before the
12 alien may be granted an extension of
13 status under paragraph (9)(A)(ii).

14 “(iii) DEPOSIT.—Penalties collected
15 pursuant to this subparagraph shall be de-
16 posited into the Comprehensive Immigra-
17 tion Reform Trust Fund established under
18 section 6(a)(1) of the Border Security,
19 Economic Opportunity, and Immigration
20 Modernization Act.

21 “(11) ADJUDICATION.—

22 “(A) FAILURE TO SUBMIT SUFFICIENT
23 EVIDENCE.—The Secretary shall deny an appli-
24 cation submitted by an alien who fails to sub-
25 mit—

1 “(i) requested initial evidence, includ-
2 ing requested biometric data; or

3 “(ii) any requested additional evidence
4 by the date required by the Secretary.

5 “(B) AMENDED APPLICATION.—An alien
6 whose application for registered provisional im-
7 migrant status is denied under subparagraph
8 (A) may file an amended application for such
9 status to the Secretary if the amended applica-
10 tion—

11 “(i) is filed within the application pe-
12 riod described in paragraph (3); and

13 “(ii) contains all the required informa-
14 tion and fees that were missing from the
15 initial application.

16 “(12) EVIDENCE OF REGISTERED PROVISIONAL
17 IMMIGRANT STATUS.—

18 “(A) IN GENERAL.—The Secretary shall
19 issue documentary evidence of registered provi-
20 sional immigrant status to each alien whose ap-
21 plication for such status has been approved.

22 “(B) DOCUMENTATION FEATURES.—Docu-
23 mentary evidence provided under subparagraph
24 (A)—

1 “(i) shall be machine-readable and
2 tamper-resistant, and shall contain a
3 digitized photograph;

4 “(ii) shall, during the alien’s author-
5 ized period of admission, and any exten-
6 sion of such authorized admission, serve as
7 a valid travel and entry document for the
8 purpose of applying for admission to the
9 United States;

10 “(iii) may be accepted during the pe-
11 riod of its validity by an employer as evi-
12 dence of employment authorization and
13 identity under section 274A(b)(1)(B);

14 “(iv) shall indicate that the alien is
15 authorized to work in the United States
16 for up to 3 years; and

17 “(v) shall include such other features
18 and information as may be prescribed by
19 the Secretary.

20 “(13) DACA RECIPIENTS.—Unless the Sec-
21 retary determines that an alien who was granted De-
22 ferred Action for Childhood Arrivals (referred to in
23 this paragraph as ‘DACA’) pursuant to the Sec-
24 retary’s memorandum of June 15, 2012, has en-
25 gaged in conduct since the alien was granted DACA

1 that would make the alien ineligible for registered
2 provisional immigrant status, the Secretary may
3 grant such status to the alien if renewed national se-
4 curity and law enforcement clearances have been
5 completed on behalf of the alien.

6 “(d) TERMS AND CONDITIONS OF REGISTERED PRO-
7 VISIONAL IMMIGRANT STATUS.—

8 “(1) CONDITIONS OF REGISTERED PROVISIONAL
9 IMMIGRANT STATUS.—

10 “(A) EMPLOYMENT.—Notwithstanding any
11 other provision of law, including section
12 241(a)(7), a registered provisional immigrant
13 shall be authorized to be employed in the
14 United States while in such status.

15 “(B) TRAVEL OUTSIDE THE UNITED
16 STATES.—A registered provisional immigrant
17 may travel outside of the United States and
18 may be admitted, if otherwise admissible, upon
19 returning to the United States without having
20 to obtain a visa if—

21 “(i) the alien is in possession of—

22 “(I) valid, unexpired documen-
23 tary evidence of registered provisional
24 immigrant status that complies with
25 subsection (c)(12); or

1 “(II) a travel document, duly ap-
2 proved by the Secretary, that was
3 issued to the alien after the alien’s
4 original documentary evidence was
5 lost, stolen, or destroyed;

6 “(ii) the alien’s absence from the
7 United States did not exceed 180 days, un-
8 less the alien’s failure to timely return was
9 due to extenuating circumstances beyond
10 the alien’s control;

11 “(iii) the alien meets the requirements
12 for an extension as described in subclauses
13 (I) and (III) of paragraph (9)(A); and

14 “(iv) the alien establishes that the
15 alien is not inadmissible under subpara-
16 graph (A)(i), (A)(iii), (B), or (C) of section
17 212(a)(3).

18 “(C) ADMISSION.—An alien granted reg-
19 istered provisional immigrant status under this
20 section shall be considered to have been admit-
21 ted and lawfully present in the United States in
22 such status as of the date on which the alien’s
23 application was filed.

1 “(D) CLARIFICATION OF STATUS.—An
2 alien granted registered provisional immigrant
3 status—

4 “(i) is lawfully admitted to the United
5 States; and

6 “(ii) may not be classified as a non-
7 immigrant or as an alien who has been
8 lawfully admitted for permanent residence.

9 “(2) REVOCATION.—

10 “(A) IN GENERAL.—The Secretary may re-
11 voke the status of a registered provisional immi-
12 grant at any time after providing appropriate
13 notice to the alien, and after the exhaustion or
14 waiver of all applicable administrative review
15 procedures under section 245E(c), if the
16 alien—

17 “(i) no longer meets the eligibility re-
18 quirements set forth in subsection (b);

19 “(ii) knowingly used documentation
20 issued under this section for an unlawful
21 or fraudulent purpose; or

22 “(iii) was absent from the United
23 States—

24 “(I) for any single period longer
25 than 180 days in violation of the re-

1 quirements set forth in paragraph
2 (1)(B)(ii); or

3 “(II) for more than 180 days in
4 the aggregate during any calendar
5 year, unless the alien’s failure to time-
6 ly return was due to extenuating cir-
7 cumstances beyond the alien’s control.

8 “(B) ADDITIONAL EVIDENCE.—In deter-
9 mining whether to revoke an alien’s status
10 under subparagraph (A), the Secretary may re-
11 quire the alien—

12 “(i) to submit additional evidence; or

13 “(ii) to appear for an interview.

14 “(C) INVALIDATION OF DOCUMENTA-
15 TION.—If an alien’s registered provisional im-
16 migrant status is revoked under subparagraph
17 (A), any documentation issued by the Secretary
18 to such alien under subsection (c)(12) shall
19 automatically be rendered invalid for any pur-
20 pose except for departure from the United
21 States.

22 “(3) INELIGIBILITY FOR PUBLIC BENEFITS.—
23 An alien who has been granted registered provisional
24 immigrant status under this section is not eligible
25 for any Federal means-tested public benefit (as such

1 term is defined and implemented in section 403 of
2 the Personal Responsibility and Work Opportunity
3 Reconciliation Act of 1996 (8 U.S.C. 1613)).

4 “(4) TREATMENT OF REGISTERED PROVISIONAL
5 IMMIGRANTS.—A noncitizen granted registered pro-
6 visional immigrant status under this section shall be
7 considered lawfully present in the United States for
8 all purposes while such noncitizen remains in such
9 status, except that the noncitizen—

10 “(A) is not entitled to the premium assist-
11 ance tax credit authorized under section 36B of
12 the Internal Revenue Code of 1986 for his or
13 her coverage;

14 “(B) shall be subject to the rules applica-
15 ble to individuals not lawfully present that are
16 set forth in subsection (e) of such section;

17 “(C) shall be subject to the rules applicable
18 to individuals not lawfully present that are set
19 forth in section 1402(e) of the Patient Protec-
20 tion and Affordable Care Act (42 U.S.C.
21 18071); and

22 “(D) shall be subject to the rules applica-
23 ble to individuals not lawfully present set forth
24 in section 5000A(d)(3) of the Internal Revenue
25 Code of 1986.

1 “(5) ASSIGNMENT OF SOCIAL SECURITY NUM-
2 BER.—

3 “(A) IN GENERAL.—The Commissioner of
4 Social Security, in coordination with the Sec-
5 retary, shall implement a system to allow for
6 the assignment of a Social Security number and
7 the issuance of a Social Security card to each
8 alien who has been granted registered provi-
9 sional immigrant status under this section.

10 “(B) USE OF INFORMATION.—The Sec-
11 retary shall provide the Commissioner of Social
12 Security with information from the applications
13 filed by aliens granted registered provisional im-
14 migrant status under this section and such
15 other information as the Commissioner deter-
16 mines to be necessary to assign a Social Secu-
17 rity account number to such aliens. The Com-
18 missioner may use information received from
19 the Secretary under this subparagraph to as-
20 sign Social Security account numbers to such
21 aliens and to administer the programs of the
22 Social Security Administration. The Commis-
23 sioner may maintain, use, and disclose such in-
24 formation only as permitted under section 552a
25 of title 5, United States Code (commonly known

1 as the Privacy Act of 1974) and other applica-
2 ble Federal laws.

3 “(e) DISSEMINATION OF INFORMATION ON REG-
4 ISTERED PROVISIONAL IMMIGRANT PROGRAM.—As soon
5 as practicable after the date of the enactment of the Bor-
6 der Security, Economic Opportunity, and Immigration
7 Modernization Act, the Secretary, in cooperation with en-
8 tities approved by the Secretary, and in accordance with
9 a plan adopted by the Secretary, shall broadly dissemi-
10 nate, in the most common languages spoken by aliens who
11 would qualify for registered provisional immigrant status
12 under this section, to television, radio, print, and social
13 media to which such aliens would likely have access—

14 “(1) the procedures for applying for such sta-
15 tus;

16 “(2) the terms and conditions of such status;
17 and

18 “(3) the eligibility requirements for such sta-
19 tus.”.

20 (b) ENLISTMENT IN THE ARMED FORCES.—Section
21 504(b)(1) of title 10, United States Code, is amended by
22 adding at the end the following:

23 “(D) An alien who has been granted registered
24 provisional immigrant status under section 245B of
25 the Immigration and Nationality Act.”.

1 **SEC. 2102. ADJUSTMENT OF STATUS OF REGISTERED PRO-**
2 **VISIONAL IMMIGRANTS.**

3 (a) IN GENERAL.—Chapter 5 of title II (8 U.S.C.
4 1255 et seq.) is amended by inserting after section 245B,
5 as added by section 2101 of this title, the following:

6 **“SEC. 245C. ADJUSTMENT OF STATUS OF REGISTERED PRO-**
7 **VISIONAL IMMIGRANTS.**

8 “(a) IN GENERAL.—Subject to section 245E(d) and
9 section 2302(c)(3) of the Border Security, Economic Op-
10 portunity, and Immigration Modernization Act, the Sec-
11 retary may adjust the status of a registered provisional
12 immigrant to that of an alien lawfully admitted for perma-
13 nent residence if the registered provisional immigrant sat-
14 isfies the eligibility requirements set forth in subsection
15 (b).

16 “(b) ELIGIBILITY REQUIREMENTS.—

17 “(1) REGISTERED PROVISIONAL IMMIGRANT
18 STATUS.—

19 “(A) IN GENERAL.—The alien was granted
20 registered provisional immigrant status under
21 section 245B and remains eligible for such sta-
22 tus.

23 “(B) CONTINUOUS PHYSICAL PRESENCE.—

24 The alien establishes, to the satisfaction of the
25 Secretary, that the alien was not continuously
26 absent from the United States for more than

1 180 days in any calendar year during the pe-
2 riod of admission as a registered provisional im-
3 migrant, unless the alien's absence was due to
4 extenuating circumstances beyond the alien's
5 control.

6 “(C) MAINTENANCE OF WAIVERS OF INAD-
7 MISSIBILITY.—The grounds of inadmissibility
8 set forth in section 212(a) that were previously
9 waived for the alien or made inapplicable under
10 section 245B(b) shall not apply for purposes of
11 the alien's adjustment of status under this sec-
12 tion.

13 “(D) PENDING REVOCATION PRO-
14 CEEDINGS.—If the Secretary has notified the
15 applicant that the Secretary intends to revoke
16 the applicant's registered provisional immigrant
17 status under section 245B(d)(2)(A), the Sec-
18 retary may not approve an application for ad-
19 justment of status under this section unless the
20 Secretary makes a final determination not to
21 revoke the applicant's status.

22 “(2) PAYMENT OF TAXES.—

23 “(A) IN GENERAL.—An applicant may not
24 file an application for adjustment of status

1 under this section unless the applicant has sat-
2 isfied any applicable Federal tax liability.

3 “(B) DEFINITION OF APPLICABLE FED-
4 ERAL TAX LIABILITY.—In subparagraph (A),
5 the term ‘applicable Federal tax liability’ means
6 all Federal income taxes assessed in accordance
7 with section 6203 of the Internal Revenue Code
8 of 1986 since the date on which the applicant
9 was authorized to work in the United States as
10 a registered provisional immigrant under sec-
11 tion 245B(a).

12 “(C) COMPLIANCE.—The applicant may
13 demonstrate compliance with subparagraph (A)
14 by submitting such documentation as the Sec-
15 retary, in consultation with the Secretary of the
16 Treasury, may require by regulation.

17 “(3) EMPLOYMENT REQUIREMENT.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraphs (D) and (E), an alien applying
20 for adjustment of status under this section shall
21 establish that, during his or her period of status
22 as a registered provisional immigrant, he or
23 she—

24 “(i)(I) was regularly employed
25 throughout the period of admission as a

1 registered provisional immigrant, allowing
2 for brief periods lasting not more than 60
3 days; and

4 “(II) is not likely to become a public
5 charge (as determined under section
6 212(a)(4)); or

7 “(ii) can demonstrate average income
8 or resources that are not less than 125
9 percent of the Federal poverty level
10 throughout the period of admission as a
11 registered provisional immigrant.

12 “(B) EVIDENCE OF EMPLOYMENT.—

13 “(i) DOCUMENTS.—An alien may sat-
14 isfy the employment requirement under
15 subparagraph (A)(i) by submitting, to the
16 Secretary, records that—

17 “(I) establish, by the preponder-
18 ance of the evidence, compliance with
19 such employment requirement; and

20 “(II) have been maintained by
21 the Social Security Administration,
22 the Internal Revenue Service, or any
23 other Federal, State, or local govern-
24 ment agency.

1 “(ii) OTHER DOCUMENTS.—An alien
2 who is unable to submit the records de-
3 scribed in clause (i) may satisfy the em-
4 ployment or education requirement under
5 subparagraph (A) by submitting to the
6 Secretary at least 2 types of reliable docu-
7 ments not described in clause (i) that pro-
8 vide evidence of employment or education,
9 including—

10 “(I) bank records;

11 “(II) business records;

12 “(III) employer records;

13 “(IV) records of a labor union,
14 day labor center, or organization that
15 assists workers in employment;

16 “(V) sworn affidavits from non-
17 relatives who have direct knowledge of
18 the alien’s work or education, that
19 contain—

20 “(aa) the name, address,
21 and telephone number of the affi-
22 ant;

23 “(bb) the nature and dura-
24 tion of the relationship between
25 the affiant and the alien; and

1 “(cc) other verification or
2 information;

3 “(VI) remittance records; and

4 “(VII) school records from insti-
5 tutions described in subparagraph
6 (D).

7 “(iii) ADDITIONAL DOCUMENTS AND
8 RESTRICTIONS.—The Secretary may—

9 “(I) designate additional docu-
10 ments that may be used to establish
11 compliance with the requirement
12 under subparagraph (A); and

13 “(II) set such terms and condi-
14 tions on the use of affidavits as may
15 be necessary to verify and confirm the
16 identity of any affiant or to otherwise
17 prevent fraudulent submissions.

18 “(C) SATISFACTION OF EMPLOYMENT RE-
19 QUIREMENT.—An alien may not be required to
20 satisfy the employment requirements under this
21 section with a single employer.

22 “(D) EDUCATION PERMITTED.—An alien
23 may satisfy the requirement under subpara-
24 graph (A), in whole or in part, by providing evi-
25 dence of full-time attendance at—

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1 “(i) an institution of higher education
2 (as defined in section 102(a) of the Higher
3 Education Act of 1965 (20 U.S.C.
4 1002(a)));

5 “(ii) a secondary school, including a
6 public secondary school (as defined in sec-
7 tion 9101 of the Elementary and Sec-
8 ondary Education Act of 1965 (20 U.S.C.
9 7801));

10 “(iii) an education, literacy, or career
11 and technical training program (including
12 vocational training) that is designed to
13 lead to placement in postsecondary edu-
14 cation, job training, or employment
15 through which the alien is working toward
16 such placement; or

17 “(iv) an education program assisting
18 students either in obtaining a high school
19 equivalency diploma, certificate, or its rec-
20 ognized equivalent under State law (includ-
21 ing a certificate of completion, certificate
22 of attendance, or alternate award), or in
23 passing a General Educational Develop-
24 ment exam or other equivalent State-au-
25 thorized exam or completed other applica-

1 ble State requirements for high school
2 equivalency.

3 “(E) AUTHORIZATION OF EXCEPTIONS
4 AND WAIVERS.—

5 “(i) EXCEPTIONS BASED ON AGE OR
6 DISABILITY.—The employment and edu-
7 cation requirements under this paragraph
8 shall not apply to any alien who —

9 “(I) is younger than 21 years of
10 age on the date on which the alien
11 files an application for the first exten-
12 sion of the initial period of authorized
13 admission as a registered provisional
14 immigrant;

15 “(II) is at least 60 years of age
16 on the date on which the alien files an
17 application for an extension of reg-
18 istered provisional immigrant status
19 or at least 65 years of age on the date
20 on which the alien’s application for
21 adjustment of status is filed under
22 this section; or

23 “(III) has a physical or mental
24 disability (as defined in section 3(2)
25 of the Americans with Disabilities Act

1 of 1990 (42 U.S.C. 12102(2))) or as
2 a result of pregnancy if such condition
3 is evidenced by the submission of doc-
4 umentation prescribed by the Sec-
5 retary.

6 “(ii) FAMILY EXCEPTIONS.—The em-
7 ployment and education requirements
8 under this paragraph shall not apply to
9 any alien who is a dependent registered
10 provisional immigrant under subsection
11 (b)(5).

12 “(iii) TEMPORARY EXCEPTIONS.—The
13 employment and education requirements
14 under this paragraph shall not apply dur-
15 ing any period during which the alien—

16 “(I) was on medical leave, mater-
17 nity leave, or other employment leave
18 authorized by Federal law, State law,
19 or the policy of the employer;

20 “(II) is or was the primary care-
21 taker of a child or another person who
22 requires supervision or is unable to
23 care for himself or herself; or

1 “(III) was unable to work due to
2 circumstances outside the control of
3 the alien.

4 “(iv) WAIVER.—The Secretary may
5 waive the employment or education re-
6 quirements under this paragraph with re-
7 spect to any individual alien who dem-
8 onstrates extreme hardship to himself or
9 herself or to a spouse, parent, or child who
10 is a United States citizen or lawful perma-
11 nent resident.

12 “(4) ENGLISH SKILLS.—

13 “(A) IN GENERAL.—Except as provided
14 under subparagraph (C), a registered provi-
15 sional immigrant who is 16 years of age or
16 older shall establish that he or she—

17 “(i) meets the requirements set forth
18 in section 312; or

19 “(ii) is satisfactorily pursuing a
20 course of study, pursuant to standards es-
21 tablished by the Secretary of Education, in
22 consultation with the Secretary, to achieve
23 an understanding of English and knowl-
24 edge and understanding of the history and

1 Government of the United States, as de-
2 scribed in section 312(a).

3 “(B) RELATION TO NATURALIZATION EX-
4 AMINATION.—A registered provisional immi-
5 grant who demonstrates that he or she meets
6 the requirements set forth in section 312 may
7 be considered to have satisfied such require-
8 ments for purposes of becoming naturalized as
9 a citizen of the United States.

10 “(C) EXCEPTIONS.—

11 “(i) MANDATORY.—Subparagraph (A)
12 shall not apply to any person who is unable
13 to comply with the requirements under
14 that subparagraph because of a physical or
15 developmental disability or mental impair-
16 ment.

17 “(ii) DISCRETIONARY.—The Secretary
18 may waive all or part of subparagraph (A)
19 for a registered provisional immigrant who
20 is 70 years of age or older on the date on
21 which an application is filed for adjust-
22 ment of status under this section.

23 “(5) MILITARY SELECTIVE SERVICE.—The alien
24 shall provide proof of registration under the Military
25 Selective Service Act (50 U.S.C. App. 451 et seq.),

1 if the alien is subject to such registration on or be-
2 fore the date on which the alien's application for
3 registered provisional immigrant status is granted.

4 “(c) APPLICATION PROCEDURES.—

5 “(1) IN GENERAL.—Beginning on the date de-
6 scribed in paragraph (2), a registered provisional im-
7 migrant, or a registered provisional immigrant de-
8 pendent, who meets the eligibility requirements set
9 forth in subsection (b) may apply for adjustment of
10 status to that of an alien lawfully admitted for per-
11 manent residence by submitting an application to
12 the Secretary that includes the evidence required, by
13 regulation, to demonstrate the applicant's eligibility
14 for such adjustment.

15 “(2) BACK OF THE LINE.—The status of a reg-
16 istered provisional immigrant may not be adjusted to
17 that of an alien lawfully admitted for permanent res-
18 idence under this section until after the Secretary of
19 State certifies that immigrant visas have become
20 available for all approved petitions for immigrant
21 visas that were filed under sections 201 and 203 be-
22 fore the date of the enactment of the Border Secu-
23 rity, Economic Opportunity, and Immigration Mod-
24 ernization Act.

1 “(3) INTERVIEW.—The Secretary may interview
2 applicants for adjustment of status under this sec-
3 tion to determine whether they meet the eligibility
4 requirements set forth in subsection (b).

5 “(4) SECURITY AND LAW ENFORCEMENT
6 CLEARANCES.—The Secretary may not adjust the
7 status of a registered provisional immigrant under
8 this section until renewed national security and law
9 enforcement clearances have been completed with re-
10 spect to the registered provisional immigrant, to the
11 satisfaction of the Secretary.

12 “(5) FEES AND PENALTIES.—

13 “(A) PROCESSING FEES.—

14 “(i) IN GENERAL.—The Secretary
15 shall impose a processing fee on applicants
16 for adjustment of status under this section
17 at a level sufficient to recover the full cost
18 of processing such applications, including
19 costs associated with—

20 “(I) adjudicating the applica-
21 tions;

22 “(II) taking and processing bio-
23 metrics;

1 “(III) performing national secu-
2 rity and criminal checks, including ad-
3 judication;

4 “(IV) preventing and inves-
5 tigating fraud; and

6 “(V) the administration of the
7 fees collected.

8 “(ii) AUTHORITY TO LIMIT FEES.—
9 The Secretary, by regulation, may—

10 “(I) limit the maximum proc-
11 essing fee payable under this subpara-
12 graph by a family, including spouses
13 and children; and

14 “(II) exempt other defined class-
15 es of individuals from the payment of
16 the fee authorized under clause (i).

17 “(iii) DEPOSIT AND USE OF FEES.—
18 Fees collected under this subparagraph—

19 “(I) shall be deposited into the
20 Immigration Examinations Fee Ac-
21 count pursuant to section 286(m);
22 and

23 “(II) shall remain available until
24 expended pursuant to section 286(n).

25 “(B) PENALTIES.—

1 “(i) IN GENERAL.—In addition to the
2 processing fee required under subpara-
3 graph (A) and the penalty required under
4 section 245B(c)(6)(D), an alien who was
5 21 years of age or older on the date on
6 which the Border Security, Economic Op-
7 portunity, and Immigration Modernization
8 Act was originally introduced in the Senate
9 and is filing an application for adjustment
10 of status under this section shall pay a
11 \$1,000 penalty to the Secretary unless the
12 alien meets the requirements under section
13 245D(b).

14 “(ii) INSTALLMENTS.—The Secretary
15 shall establish a process for collecting pay-
16 ments required under clause (i) through
17 periodic installments.

18 “(iii) DEPOSIT, ALLOCATION, AND
19 SPENDING OF PENALTIES.—Penalties col-
20 lected under this subparagraph—

21 “(I) shall be deposited into the
22 Comprehensive Immigration Trust
23 Fund established under section
24 6(a)(1) of the Border Security, Eco-

1 nomic Opportunity, and Immigration
2 Modernization Act; and
3 “(II) may be used for the pur-
4 poses set forth in section 6(a)(3)(B)
5 of such Act.”.

6 (b) LIMITATION ON REGISTERED PROVISIONAL IMMI-
7 GRANTS.—An alien admitted as a registered provisional
8 immigrant under section 245B of the Immigration and
9 Nationality Act, as added by subsection (a), may only ad-
10 just status to an alien lawfully admitted for permanent
11 resident status under section 245C or 245D of such Act
12 or section 2302.

13 (c) NATURALIZATION.—Section 319 (8 U.S.C. 1430)
14 is amended—

15 (1) in the section heading, by striking “**AND**
16 **EMPLOYEES OF CERTAIN NONPROFIT ORGANI-**
17 **ZATIONS**” and inserting “**, EMPLOYEES OF CER-**
18 **TAIN NONPROFIT ORGANIZATIONS, AND OTHER**
19 **LONG-TERM LAWFUL RESIDENTS**”; and

20 (2) by adding at the end the following:

21 “(f) Any lawful permanent resident who was lawfully
22 present in the United States and eligible for work author-
23 ization for not less than 10 years before becoming a lawful
24 permanent resident may be naturalized upon compliance
25 with all the requirements under this title except the provi-

1 sions of section 316(a)(1) if such person, immediately pre-
2 ceding the date on which the person filed an application
3 for naturalization—

4 “(1) has resided continuously within the United
5 States, after being lawfully admitted for permanent
6 residence, for at least 3 years;

7 “(2) during the 3-year period immediately pre-
8 ceding such filing date, has been physically present
9 in the United States for periods totaling at least 50
10 percent of such period; and

11 “(3) has resided within the State or in the ju-
12 risdiction of the U.S. Citizenship and Immigration
13 Services field office in the United States in which
14 the applicant filed such application for at least 3
15 months.”.

16 **SEC. 2103. THE DREAM ACT.**

17 (a) SHORT TITLE.—This section may be cited as the
18 “Development, Relief, and Education for Alien Minors Act
19 of 2013” or the “DREAM Act 2013”.

20 (b) ADJUSTMENT OF STATUS FOR CERTAIN ALIENS
21 WHO ENTERED THE UNITED STATES AS CHILDREN.—
22 Chapter 5 of title II (8 U.S.C. 1255 et seq.) is amended
23 by inserting after section 245C, as added by section 2102
24 of this title, the following:

1 **“SEC. 245D. ADJUSTMENT OF STATUS FOR CERTAIN ALIENS**
2 **WHO ENTERED THE UNITED STATES AS CHIL-**
3 **DREN.**

4 “(a) DEFINITIONS.—In this section:

5 “(1) INSTITUTION OF HIGHER EDUCATION.—

6 The term ‘institution of higher education’ has the
7 meaning given such term in section 102 of the High-
8 er Education Act of 1965 (20 U.S.C. 1002), except
9 that the term does not include institutions described
10 in subsection (a)(1)(C) of such section.

11 “(2) SECRETARY.—The term ‘Secretary’ means
12 the Secretary of Homeland Security.

13 “(3) UNIFORMED SERVICES.—The term ‘Uni-
14 formed Services’ has the meaning given the term
15 ‘uniformed services’ in section 101(a)(5) of title 10,
16 United States Code.

17 “(b) ADJUSTMENT OF STATUS FOR CERTAIN ALIENS
18 WHO ENTERED THE UNITED STATES AS CHILDREN.—

19 “(1) REQUIREMENTS.—

20 “(A) IN GENERAL.—The Secretary may
21 adjust the status of a registered provisional im-
22 migrant to the status of a lawful permanent
23 resident if the immigrant demonstrates that he
24 or she—

25 “(i) has been a registered provisional
26 immigrant for at least 5 years;

1 “(ii) was younger than 16 years of
2 age on the date on which the alien initially
3 entered the United States;

4 “(iii) has earned a high school di-
5 ploma, a commensurate alternative award
6 from a public or private high school or sec-
7 ondary school, or has obtained a general
8 education development certificate recog-
9 nized under State law, or a high school
10 equivalency diploma in the United States;

11 “(iv)(I) has acquired a degree from an
12 institution of higher education or has com-
13 pleted at least 2 years, in good standing,
14 in a program for a bachelor’s degree or
15 higher degree in the United States; or

16 “(II) has served in the Uniformed
17 Services for at least 4 years and, if dis-
18 charged, received an honorable discharge;
19 and

20 “(v) has provided a list of each sec-
21 ondary school (as that term is defined in
22 section 9101 of the Elementary and Sec-
23 ondary Education Act of 1965 (20 U.S.C.
24 7801)) that the alien attended in the
25 United States.

1 “(B) HARDSHIP EXCEPTION.—

2 “(i) IN GENERAL.—The Secretary
3 may adjust the status of a registered provi-
4 sional immigrant to the status of a lawful
5 permanent resident if the alien—

6 “(I) satisfies the requirements
7 under clauses (i), (ii), (iii), and (v) of
8 subparagraph (A); and

9 “(II) demonstrates compelling
10 circumstances for the inability to sat-
11 isfy the requirement under subpara-
12 graph (A)(iv).

13 “(C) CITIZENSHIP REQUIREMENT.—

14 “(i) IN GENERAL.—Except as pro-
15 vided in clause (ii), the Secretary may not
16 adjust the status of an alien to lawful per-
17 manent resident status under this section
18 unless the alien demonstrates that the
19 alien satisfies the requirements under sec-
20 tion 312(a).

21 “(ii) EXCEPTION.—Clause (i) shall
22 not apply to an alien whose physical or de-
23 velopmental disability or mental impair-
24 ment prevents the alien from meeting the
25 requirements such section.

1 “(D) SUBMISSION OF BIOMETRIC AND BIO-
2 GRAPHIC DATA.—The Secretary may not adjust
3 the status of an alien to lawful permanent resi-
4 dent status unless the alien—

5 “(i) submits biometric and biographic
6 data, in accordance with procedures estab-
7 lished by the Secretary; or

8 “(ii) complies with an alternative pro-
9 cedure prescribed by the Secretary, if the
10 alien is unable to provide such biometric
11 data because of a physical impairment.

12 “(E) BACKGROUND CHECKS.—

13 “(i) REQUIREMENT FOR BACKGROUND
14 CHECKS.—The Secretary shall utilize bio-
15 metric, biographic, and other data that the
16 Secretary determines appropriate—

17 “(I) to conduct national security
18 and law enforcement background
19 checks of an alien applying for lawful
20 permanent resident status under this
21 section; and

22 “(II) to determine whether there
23 is any criminal, national security, or
24 other factor that would render the
25 alien ineligible for such status.

1 “(ii) COMPLETION OF BACKGROUND
2 CHECKS.—The Secretary may not adjust
3 an alien’s status to the status of a lawful
4 permanent resident under this subsection
5 until the national security and law enforce-
6 ment background checks required under
7 clause (i) have been completed with respect
8 to the alien, to the satisfaction of the Sec-
9 retary.

10 “(2) APPLICATION FOR LAWFUL PERMANENT
11 RESIDENT STATUS.—

12 “(A) IN GENERAL.—A registered provi-
13 sional immigrant seeking lawful permanent resi-
14 dent status shall file an application for such
15 status in such manner as the Secretary may re-
16 quire.

17 “(B) ADJUDICATION.—

18 “(i) IN GENERAL.—The Secretary
19 shall evaluate each application filed by a
20 registered provisional immigrant under this
21 paragraph to determine whether the alien
22 meets the requirements under paragraph
23 (1).

24 “(ii) ADJUSTMENT OF STATUS IF FA-
25 VORABLE DETERMINATION.—If the Sec-

1 retary determines that the alien meets the
2 requirements under paragraph (1), the
3 Secretary shall notify the alien of such de-
4 termination and adjust the status of the
5 alien to lawful permanent resident status,
6 effective as of the date of such determina-
7 tion.

8 “(iii) ADVERSE DETERMINATION.—If
9 the Secretary determines that the alien
10 does not meet the requirements under
11 paragraph (1), the Secretary shall notify
12 the alien of such determination.

13 “(C) DACA RECIPIENTS.—The Secretary
14 may adopt streamlined procedures for appli-
15 cants for adjustment to lawful permanent resi-
16 dent status under this section who were granted
17 Deferred Action for Childhood Arrivals pursu-
18 ant to the Secretary’s memorandum of June
19 15, 2012.

20 “(3) TREATMENT FOR PURPOSES OF NATU-
21 RALIZATION.—

22 “(A) IN GENERAL.—An alien granted law-
23 ful permanent resident status under this section
24 shall be considered, for purposes of title III—

1 “(i) to have been lawfully admitted for
2 permanent residence; and

3 “(ii) to have been in the United
4 States as an alien lawfully admitted to the
5 United States for permanent residence
6 during the period the alien was a reg-
7 istered provisional immigrant.

8 “(B) LIMITATION ON APPLICATION FOR
9 NATURALIZATION.—An alien may not apply for
10 naturalization while the alien is a registered
11 provisional immigrant..”.

12 (c) EXEMPTION FROM NUMERICAL LIMITATIONS.—
13 Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is amended—

14 (1) by redesignating subparagraph (E) as sub-
15 paragraph (F); and

16 (2) by inserting after subparagraph (D) the fol-
17 lowing:

18 “(E) Aliens whose status is adjusted to perma-
19 nent resident status under section 245C or 245D.”.

20 (d) RESTORATION OF STATE OPTION TO DETER-
21 MINE RESIDENCY FOR PURPOSES OF HIGHER EDU-
22 CATION.—

23 (1) REPEAL.—Section 505 of the Illegal Immi-
24 gration Reform and Immigrant Responsibility Act of
25 1996 (8 U.S.C. 1623) is repealed.

1 (2) EFFECTIVE DATE.—The repeal under para-
2 graph (1) shall take effect as if included in the origi-
3 nal enactment of the Illegal Immigration Reform
4 and Immigrant Responsibility Act of 1996 (division
5 C of Public Law 104–208).

6 **SEC. 2104. ADDITIONAL REQUIREMENTS.**

7 (a) IN GENERAL.—Chapter 5 of title II (8 U.S.C.
8 1255 et seq.) is amended by inserting after section 245C,
9 as added by section 2102 of this title, the following:

10 **“SEC. 245E. ADDITIONAL REQUIREMENTS RELATING TO**
11 **REGISTERED PROVISIONAL IMMIGRANTS**
12 **AND OTHERS.**

13 “(a) DISCLOSURES.—

14 “(1) PROHIBITED DISCLOSURES.—Except as
15 otherwise provided in this subsection, no officer or
16 employee of any Federal agency may—

17 “(A) use the information furnished in an
18 application for lawful status under section
19 245B, 245C, or 245D for any purpose other
20 than to make a determination on any applica-
21 tion by the alien for any immigration benefit or
22 protection;

23 “(B) make any publication through which
24 information furnished by any particular appli-
25 cant can be identified; or

1 “(C) permit anyone other than the sworn
2 officers, employees, and contractors of such
3 agency or of another entity approved by the
4 Secretary to examine any individual application
5 for lawful status under section 245B, 245C, or
6 245D.

7 “(2) REQUIRED DISCLOSURES.—The Secretary
8 shall provide the information furnished in an appli-
9 cation filed under section 245B, 245C, or 245D and
10 any other information derived from such furnished
11 information to—

12 “(A) a law enforcement agency, intel-
13 ligence agency, national security agency, a com-
14 ponent of the Department of Homeland Secu-
15 rity, court, or grand jury, consistent with law,
16 in connection with—

17 “(i) a criminal investigation or pros-
18 ecution of any felony not related to the ap-
19 plicant’s immigration status; or

20 “(ii) a national security investigation
21 or prosecution; and

22 “(B) an official coroner for purposes of af-
23 firmatively identifying a deceased individual,
24 whether or not the death of such individual re-
25 sulted from a crime.

1 “(3) AUDITING AND EVALUATION OF INFORMA-
2 TION.—The Secretary may—

3 “(A) audit and evaluate information fur-
4 nished as part of any application filed under
5 section 245B, 245C, or 245D for purposes of
6 identifying immigration fraud or fraud schemes;
7 and

8 “(B) use any evidence detected by means
9 of audits and evaluations for purposes of inves-
10 tigating, prosecuting, referring for prosecution,
11 or denying or terminating immigration benefits.

12 “(b) EMPLOYER PROTECTIONS.—

13 “(1) USE OF EMPLOYMENT RECORDS.—Copies
14 of employment records or other evidence of employ-
15 ment provided by an alien or by an alien’s employer
16 in support of an alien’s application for registered
17 provisional immigrant status under section 245B
18 may not be used in a civil or criminal prosecution
19 or investigation of that employer under section 274A
20 or the Internal Revenue Code of 1986 for the prior
21 unlawful employment of that alien regardless of the
22 adjudication of such application or reconsideration
23 by the Secretary of such alien’s prima facie eligi-
24 bility determination. Employers that provide unau-
25 thorized aliens with copies of employment records or

1 other evidence of employment pursuant to an appli-
2 cation for registered provisional immigrant status
3 shall not be subject to civil and criminal liability
4 pursuant to section 274A for employing such unau-
5 thorized aliens.

6 “(2) LIMIT ON APPLICABILITY.—The protec-
7 tions for employers and aliens under paragraph (1)
8 shall not apply if the aliens or employers submit em-
9 ployment records that are deemed to be fraudulent.

10 “(c) ADMINISTRATIVE REVIEW.—

11 “(1) EXCLUSIVE ADMINISTRATIVE REVIEW.—
12 Administrative review of a determination respecting
13 an application for status under section 245B, 245C,
14 245D, or 245F or section 2211 of the Agricultural
15 Worker Program Act of 2013 shall be conducted
16 solely in accordance with this subsection.

17 “(2) ADMINISTRATIVE APPELLATE REVIEW.—

18 “(A) ESTABLISHMENT OF ADMINISTRA-
19 TIVE APPELLATE AUTHORITY.—The Secretary
20 shall establish or designate an appellate author-
21 ity to provide for a single level of administrative
22 appellate review of a determination with respect
23 to applications for, or revocation of, status
24 under sections 245B, 245C, and 245D.

1 “(B) SINGLE APPEAL FOR EACH ADMINIS-
2 TRATIVE DECISION.—

3 “(i) IN GENERAL.—An alien in the
4 United States whose application for status
5 under section 245B, 245C, or 245D has
6 been denied or revoked may file with the
7 Secretary not more than 1 appeal of each
8 decision to deny or revoke such status.

9 “(ii) NOTICE OF APPEAL.—A notice of
10 appeal filed under this subparagraph shall
11 be filed not later than 90 days after the
12 date of service of the decision of denial or
13 revocation, unless the delay was reasonably
14 justifiable.

15 “(C) REVIEW BY SECRETARY.—Nothing in
16 this paragraph may be construed to limit the
17 authority of the Secretary to certify appeals for
18 review and final administrative decision.

19 “(D) DENIAL OF PETITIONS FOR DEPEND-
20 ENTS.—Appeals of a decision to deny or revoke
21 a petition filed by a registered provisional immi-
22 grant pursuant to regulations promulgated
23 under section 245B to classify a spouse or child
24 of such alien as a registered provisional immi-

1 grant shall be subject to the administrative ap-
2 pellate authority described in subparagraph (A).

3 “(E) STAY OF REMOVAL.—Aliens seeking
4 administrative review shall not be removed from
5 the United States until a final decision is ren-
6 dered establishing ineligibility for status under
7 section 245B, 245C, or 245D.

8 “(3) RECORD FOR REVIEW.—Administrative ap-
9 pellate review under paragraph (2) shall be de novo
10 and based solely upon—

11 “(A) the administrative record established
12 at the time of the determination on the applica-
13 tion; and

14 “(B) any additional newly discovered or
15 previously unavailable evidence.

16 “(4) UNLAWFUL PRESENCE.—During the pe-
17 riod in which an alien may request administrative
18 review under this subsection, and during the period
19 that any such review is pending, the alien shall not
20 be considered ‘unlawfully present in the United
21 States’ for purposes of section 212(a)(9)(B).

22 “(d) PRIVACY AND CIVIL LIBERTIES.—

23 “(1) IN GENERAL.—The Secretary, in accord-
24 ance with subsection (a)(1), shall require appro-
25 priate administrative and physical safeguards to pro-

1 tect the security, confidentiality, and integrity of
2 personally identifiable information collected, main-
3 tained, and disseminated pursuant to sections 245B,
4 245C, and 245D.

5 “(2) ASSESSMENTS.—Notwithstanding the pri-
6 vacy requirements set forth in section 222 of the
7 Homeland Security Act (6 U.S.C. 142) and the E-
8 Government Act of 2002 (Public Law 107–347), the
9 Secretary shall conduct a privacy impact assessment
10 and a civil liberties impact assessment of the legal-
11 ization program established under sections 245B,
12 245C, and 245D during the pendency of the interim
13 final regulations required to be issued under section
14 2110 of the Border Security, Economic Opportunity,
15 and Immigration Modernization Act.”.

16 (b) JUDICIAL REVIEW.—Section 242 (8 U.S.C. 1252)
17 is amended—

18 (1) in subsection (a)(2)—

19 (A) in subparagraph (B), by inserting “the
20 exercise of discretion arising under” after “no
21 court shall have jurisdiction to review”;

22 (B) in subparagraph (D), by striking
23 “raised upon a petition for review filed with an
24 appropriate court of appeals in accordance with
25 this section”;

1 (2) in subsection (b)(2), by inserting “or, in the
2 case of a decision rendered under section 245E(c),
3 in the judicial circuit in which the petitioner resides”
4 after “proceedings”; and

5 (3) by adding at the end the following:

6 “(h) JUDICIAL REVIEW OF ELIGIBILITY DETERMINA-
7 TIONS RELATING TO STATUS UNDER CHAPTER 5.—

8 “(1) DIRECT REVIEW.—If an alien’s application
9 under section 245B, 245C, 245D, or 245F or sec-
10 tion 2211 of the Agricultural Worker Program Act
11 of 2013 is denied, or is revoked after the exhaustion
12 of administrative appellate review under section
13 245E(c), the alien may seek review of such decision,
14 in accordance with chapter 7 of title 5, United
15 States Code, before the United States district court
16 for the district in which the person resides.

17 “(2) STATUS DURING REVIEW.—While a review
18 described in paragraph (1) is pending—

19 “(A) the alien shall not be deemed to ac-
20 crue unlawful presence for purposes of section
21 212(a)(9);

22 “(B) any unexpired grant of voluntary de-
23 parture under section 240B shall be tolled; and

1 “(C) the court shall have the discretion to
2 stay the execution of any order of exclusion, de-
3 portation, or removal.

4 “(3) REVIEW AFTER REMOVAL PRO-
5 CEEDINGS.—An alien may seek judicial review of a
6 denial or revocation of approval of the alien’s appli-
7 cation under section 245B, 245C, or 245D in the
8 appropriate United States court of appeal in con-
9 junction with the judicial review of an order of re-
10 moval, deportation, or exclusion if the validity of the
11 denial has not been upheld in a prior judicial pro-
12 ceeding under paragraph (1).

13 “(4) STANDARD FOR JUDICIAL REVIEW.—

14 “(A) BASIS.—Judicial review of a denial,
15 or revocation of an approval, of an application
16 under section 245B, 245C, or 245D shall be
17 based upon the administrative record estab-
18 lished at the time of the review.

19 “(B) AUTHORITY TO REMAND.—The re-
20 viewing court may remand a case under this
21 subsection to the Secretary for consideration of
22 additional evidence if the court finds that—

23 “(i) the additional evidence is mate-
24 rial; and

1 “(ii) there were reasonable grounds
2 for failure to adduce the additional evi-
3 dence before the Secretary.

4 “(C) SCOPE OF REVIEW.—Notwithstanding
5 any other provision of law, judicial review of all
6 questions arising from a denial, or revocation of
7 an approval, of an application under section
8 245B, 245C, or 245D shall be governed by the
9 standard of review set forth in section 706 of
10 title 5, United States Code.

11 “(5) REMEDIAL POWERS.—

12 “(A) JURISDICTION.—Notwithstanding any
13 other provision of law, the United States dis-
14 trict courts shall have jurisdiction over any
15 cause or claim arising from a pattern or prac-
16 tice of the Secretary in the operation or imple-
17 mentation of the Border Security, Economic
18 Opportunity, and Immigration Modernization
19 Act, or the amendments made by such Act, that
20 is arbitrary, capricious, or otherwise contrary to
21 law.

22 “(B) SCOPE OF RELIEF.—The United
23 States district courts may order any appro-
24 priate relief in a clause or claim described in
25 subparagraph (A) without regard to exhaustion,

1 ripeness, or other standing requirements (other
2 than constitutionally-mandated requirements),
3 if the court determines that—

4 “(i) the resolution of such cause or
5 claim will serve judicial and administrative
6 efficiency; or

7 “(ii) a remedy would otherwise not be
8 reasonably available or practicable.

9 “(6) CHALLENGES TO THE VALIDITY OF THE
10 SYSTEM.—

11 “(A) IN GENERAL.—Except as provided in
12 paragraph (5), any claim that section 245B,
13 245C, 245D, or 245E or any regulation, writ-
14 ten policy, or written directive, issued or un-
15 written policy or practice initiated by or under
16 the authority of the Secretary to implement
17 such sections, violates the Constitution of the
18 United States or is otherwise in violation of law
19 is available exclusively in an action instituted in
20 United States District Court in accordance with
21 the procedures prescribed in this paragraph.

22 “(B) SAVINGS PROVISION.—Except as pro-
23 vided in subparagraph (C), nothing in subpara-
24 graph (A) may be construed to preclude an ap-
25 plicant under 245B, 245C, or 245D from as-

1 serting that an action taken or a decision made
2 by the Secretary with respect to the applicant's
3 status was contrary to law.

4 “(C) CLASS ACTIONS.—Any claim de-
5 scribed in subparagraph (A) that is brought as
6 a class action shall be brought in conformity
7 with—

8 “(i) the Class Action Fairness Act of
9 2005 (Public Law 109–2); and

10 “(ii) the Federal Rules of Civil Proce-
11 dure.

“(D) PRECLUSIVE EFFECT.—The final disposition of any claim brought under subparagraph (A) shall be preclusive of any such claim asserted by the same individual in a subsequent proceeding under this subsection.

17 “(E) EXHAUSTION AND STAY OF PRO-
18 CEEDINGS.—

19 “(i) IN GENERAL.—No claim brought
20 under this paragraph shall require the
21 plaintiff to exhaust administrative rem-
22 edies under section 245E(c).

23 “(ii) STAY AUTHORIZED.—Nothing in
24 this paragraph may be construed to pre-
25 vent the court from staying proceedings

1 under this paragraph to permit the Sec-
2 retary to evaluate an allegation of an un-
3 written policy or practice or to take correc-
4 tive action. In determining whether to
5 issue such a stay, the court shall take into
6 account any harm the stay may cause to
7 the claimant.”.

8 (c) RULE OF CONSTRUCTION.—Section 244(h) shall
9 not limit the authority of the Secretary to adjust the sta-
10 tus of an alien under section 245C or 245D of the Immi-
11 gration and Nationality Act, as added by this subtitle.

12 (d) EFFECT OF FAILURE TO REGISTER ON ELIGI-
13 BILITY FOR IMMIGRATION BENEFITS.—Failure to comply
14 with section 264.1(f) of title 8, Code of Federal Regula-
15 tions or with removal orders or voluntary departure agree-
16 ments based on such section for acts committed before the
17 date of the enactment of this Act shall not affect the eligi-
18 bility of an alien to apply for a benefit under the Immigra-
19 tion and Nationality Act (8 U.S.C. 1101 et seq.).

20 (e) CLERICAL AMENDMENT.—The table of contents
21 is amended by inserting after the item relating to section
22 245A the following:

“Sec. 245B. Adjustment of status of eligible entrants before December 31,
2011, to that of registered provisional immigrant.

“Sec. 245C. Adjustment of status of registered provisional immigrants.

“Sec. 245D. Adjustment of status for certain aliens who entered the United
States as children.

“Sec. 245E. Additional requirements relating to registered provisional immi-
grants and others.”.

1 **SEC. 2105. CRIMINAL PENALTY.**

2 (a) IN GENERAL.—Chapter 69 of title 18, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 **“§ 1430. Improper use of information relating to reg-**
6 **istered provisional immigrant applica-**
7 **tions**

8 “Any person who knowingly uses, publishes, or per-
9 mits information described in section 245E(a) of the Im-
10 migration and Nationality Act to be examined in violation
11 of such section shall be fined not more than \$10,000.”.

12 (b) DEPOSIT OF FINES.—All criminal penalties col-
13 lected under section 1430 of title 18, United States Code,
14 as added by subsection (a), shall be deposited into the
15 Comprehensive Immigration Reform Trust Fund estab-
16 lished under section 6(a)(1).

17 (c) CLERICAL AMENDMENT.—The table of sections
18 in chapter 69 of title 18, United States Code, is amended
19 by adding at the end the following:

“1430. Improper use of information relating to registered provisional immigrant
applications.”.

20 **SEC. 2106. GRANT PROGRAM TO ASSIST ELIGIBLE APPLI-**
21 **CANTS.**

22 (a) ESTABLISHMENT.—The Secretary may establish,
23 within U.S. Citizenship and Immigration Services, a pro-
24 gram to award grants, on a competitive basis, to eligible

1 nonprofit organizations that will use the funding to assist
2 eligible applicants under section 245B, 245C, or 245D of
3 the Immigration and Nationality Act by providing them
4 with the services described in subsection (c).

5 (b) ELIGIBLE NONPROFIT ORGANIZATION.—The
6 term “eligible nonprofit organization” means a nonprofit,
7 tax-exempt organization, including a community, faith-
8 based or other immigrant-serving organization, whose
9 staff has demonstrated qualifications, experience, and ex-
10 pertise in providing quality services to immigrants, refu-
11 gees, persons granted asylum, or persons applying for
12 such statuses.

13 (c) USE OF FUNDS.—Grant funds awarded under
14 this section may be used for the design and implementa-
15 tion of programs that provide—

16 (1) information to the public regarding the eli-
17 gibility and benefits of registered provisional immi-
18 grant status authorized under section 245B of the
19 Immigration and Nationality Act, particularly indi-
20 viduals potentially eligible for such status;

21 (2) assistance, within the scope of authorized
22 practice of immigration law, to individuals submit-
23 ting applications for registered provisional immi-
24 grant status, including—

1 (A) screening prospective applicants to as-
2 sess their eligibility for such status;

3 (B) completing applications and petitions,
4 including providing assistance in obtaining the
5 requisite documents and supporting evidence;

6 (C) applying for any waivers for which ap-
7 plicants and qualifying family members may be
8 eligible; and

9 (D) providing any other assistance that the
10 Secretary or grantees consider useful or nec-
11 essary to apply for registered provisional immi-
12 grant status;

13 (3) assistance, within the scope of authorized
14 practice of immigration law, to individuals seeking to
15 adjust their status to that of an alien admitted for
16 permanent residence under section 245C of the Im-
17 migration and Nationality Act; and

18 (4) assistance, within the scope of authorized
19 practice of immigration law, and instruction, to indi-
20 viduals—

21 (A) on the rights and responsibilities of
22 United States citizenship;

23 (B) in civics and civics-based English as a
24 second language; and

1 (C) in applying for United States citizen-
2 ship.

3 (d) SOURCE OF GRANT FUNDS.—

4 (1) APPLICATION FEES.—The Secretary may
5 use up to \$50,000,000 from the Comprehensive Im-
6 migration Reform Trust Fund established under sec-
7 tion 6(a)(1) to carry out this section.

8 (2) AUTHORIZATION OF APPROPRIATIONS.—

9 (A) AMOUNTS AUTHORIZED.—In addition
10 to the amounts made available under paragraph
11 (1), there are authorized to be appropriated
12 such sums as may be necessary for each of the
13 fiscal years 2014 through 2018 to carry out
14 this section.

15 (B) AVAILABILITY.—Any amounts appro-
16 priated pursuant to subparagraph (A) shall re-
17 main available until expended.

18 **SEC. 2107. CONFORMING AMENDMENTS TO THE SOCIAL SE-**
19 **CURITY ACT.**

20 (a) CORRECTION OF SOCIAL SECURITY RECORDS.—

21 (1) IN GENERAL.—Section 208(e)(1) of the So-
22 cial Security Act (42 U.S.C. 408(e)(1)) is amend-
23 ed—

24 (A) in subparagraph (B)(ii), by striking
25 “or” at the end;

1 (B) in subparagraph (C), by striking the
2 comma at the end and inserting a semicolon;

3 (C) by inserting after subparagraph (C)
4 the following:

5 “(D) who is granted status as a registered
6 provisional immigrant under section 245B or
7 245D of the Immigration and Nationality Act;
8 or

9 “(E) whose status is adjusted to that of
10 lawful permanent resident under section 245C
11 of the Immigration and Nationality Act,”; and

12 (D) in the undesignated matter at the end,
13 by inserting “, or in the case of an alien de-
14 scribed in subparagraph (D) or (E), if such
15 conduct is alleged to have occurred before the
16 date on which the alien submitted an applica-
17 tion under section 245B of such Act for classi-
18 fication as a registered provisional immigrant”
19 before the period at the end.

20 (2) EFFECTIVE DATE.—The amendments made
21 by paragraph (1) shall take effect on the first day
22 of the tenth month that begins after the date of the
23 enactment of this Act.

24 (b) STATE DISCRETION REGARDING TERMINATION
25 OF PARENTAL RIGHTS.—

1 (1) IN GENERAL.—A compelling reason for a
2 State not to file (or to join in the filing of) a petition
3 to terminate parental rights under section 475(5)(E)
4 of the Social Security Act (42 U.S.C. 675(5)(E))
5 shall include—

6 (A) the removal of the parent from the
7 United States, unless the parent is unfit or un-
8 willing to be a parent of the child; or

9 (B) the involvement of the parent in (in-
10 cluding detention pursuant to) an immigration
11 proceeding, unless the parent is unfit or unwill-
12 ing to be a parent of the child.

13 (2) CONDITIONS.—Before a State may file to
14 terminate the parental rights under such section
15 475(5)(E), the State (or the county or other political
16 subdivision of the State, as applicable) shall make
17 reasonable efforts—

18 (A) to identify, locate, and contact (includ-
19 ing, if appropriate, through the diplomatic or
20 consular offices of the country to which the par-
21 ent was removed or in which a parent or rel-
22 ative resides)—

23 (i) any parent of the child who is in
24 immigration detention;

1 (ii) any parent of the child who has
2 been removed from the United States; and

3 (iii) if possible, any potential adult
4 relative of the child (as described in section
5 471(a)(29));

6 (B) to notify such parent or relative of the
7 intent of the State (or the county or other polit-
8 ical subdivision of the State, as applicable) to
9 file (or to join in the filing of) a petition re-
10 ferred to in paragraph (1); or

11 (C) to reunify the child with any such par-
12 ent or relative; and

13 (D) to provide and document appropriate
14 services to the parent or relative.

15 (3) CONFORMING AMENDMENT.—Section
16 475(5)(E)(ii) of the Social Security Act (42 U.S.C.
17 675(5)(E)) is amended by inserting “, including the
18 reason set forth in section 2107(b)(1) of the Border
19 Security, Economic Opportunity, and Immigration
20 Modernization Act” after “child”.

21 (c) CHILDREN SEPARATED FROM PARENTS AND
22 CAREGIVERS.—

23 (1) STATE PLAN FOR FOSTER CARE AND ADOP-
24 TION ASSISTANCE.—Section 471(a) of the Social Se-
25 curity Act (42 U.S.C. 671(a)) is amended—

1 (A) by amending paragraph (19) to read
2 as follows:

3 “(19) provides that the State shall give pref-
4 erence to an adult relative over a nonrelated care-
5 giver when determining a placement for a child if—

6 “(A) the relative caregiver meets all rel-
7 evant State child protection standards; and

8 “(B) the standards referred to in subpara-
9 graph (A) ensure that the immigration status
10 alone of a parent, legal guardian, or relative
11 shall not disqualify the parent, legal guardian,
12 or relative from being a placement for a child;”;
13 and

14 (B) in paragraph (32), by striking “and”
15 at the end;

16 (C) in paragraph (33), by striking the pe-
17 riod at the end and inserting “; and”; and

18 (D) by adding at the end the following:

19 “(34) provides that the State shall—

20 “(A) ensure that the case manager for a
21 separated child is capable of communicating in
22 the native language of such child and of the
23 family of such child, or an interpreter who is so
24 capable is provided to communicate with such

1 child and the family of such child at no cost to
2 the child or to the family of such child;

3 “(B) coordinate with the Department of
4 Homeland Security to ensure that parents who
5 wish for their child to accompany them to their
6 country of origin are given adequate time and
7 assistance to obtain a passport and visa, and to
8 collect all relevant vital documents, such as
9 birth certificate, health, and educational records
10 and other information;

11 “(C) coordinate with State agencies re-
12 garding alternate documentation requirements
13 for a criminal records check or a fingerprint-
14 based check for a caregiver that does not have
15 Federal or State-issued identification;

16 “(D) preserve, to the greatest extent prac-
17 ticable, the privacy and confidentiality of all in-
18 formation gathered in the course of admin-
19 istering the care, custody, and placement of,
20 and follow up services provided to, a separated
21 child, consistent with the best interest of such
22 child, by not disclosing such information to
23 other government agencies or persons (other
24 than a parent, legal guardian, or relative care-
25 giver or such child), except that the head of the

1 State agency (or the county or other political
2 subdivision of the State, as applicable) may dis-
3 close such information, after placing a written
4 record of the disclosure in the file of the child—

5 “(i) to a consular official for the pur-
6 pose of reunification of a child with a par-
7 ent, legal guardian, or relative caregiver
8 who has been removed or is involved in an
9 immigration proceeding, unless the child
10 has refused contact with, or the sharing of
11 personal or identifying information with,
12 the government of his or her country of or-
13 igin;

14 “(ii) when authorized to do so by the
15 child (if the child has attained 18 years of
16 age) if the disclosure is consistent with the
17 best interest of the child; or

18 “(iii) to a law enforcement agency if
19 the disclosure would prevent imminent and
20 serious harm to another individual; and

21 “(E) not less frequently than annually,
22 compile, update, and publish a list of entities in
23 the State that are qualified to provide legal rep-
24 resentation services for a separated child, in a

1 language such that a child can read and under-
2 stand.”.

3 (2) ADDITIONAL INFORMATION TO BE IN-
4 CLUDED IN CASE PLAN.—Section 475 of such Act
5 (42 U.S.C. 675) is amended—

6 (A) in paragraph (1), by adding at the end
7 the following:

8 “(H) In the case of a separated child with
9 respect to whom the State plan requires the
10 State to provide services under section
11 471(a)(34)—

12 “(i) the location of the parent or legal
13 guardian described in paragraph (9)(A)
14 from whom the child has been separated;
15 and

16 “(ii) a written record of each disclo-
17 sure to a government agency or person
18 (other than such a parent, legal guardian,
19 or relative) of information gathered in the
20 course of tracking the care, custody, and
21 placement of, and follow-up services pro-
22 vided to, the child.”; and

23 (B) by adding at the end the following:

24 “(9) The term ‘separated child’ means an indi-
25 vidual who—

1 “(A) has a parent or legal guardian who
2 has been—

3 “(i) detained by a Federal, State, or
4 local law enforcement agency in the en-
5 forcement of an immigration law; or

6 “(ii) removed from the United States
7 as a result of a violation of such a law; and

8 “(B) is in foster care under the responsi-
9 bility of a State.”.

10 (3) EFFECTIVE DATE.—The amendments made
11 by this subsection shall take effect on the 1st day
12 of the 1st calendar quarter that begins after the 1-
13 year period that begins on the date of the enactment
14 of this Act.

15 **SEC. 2108. GOVERNMENT CONTRACTING AND ACQUISITION**
16 **OF REAL PROPERTY INTEREST.**

17 (a) EXEMPTION FROM GOVERNMENT CONTRACTING
18 AND HIRING RULES.—

19 (1) IN GENERAL.—A determination by a Fed-
20 eral agency to use a procurement competition ex-
21 emption under section 253(c) of title 41, United
22 States Code, or to use the authority granted in para-
23 graph (2), for the purpose of implementing this title
24 and the amendments made by this title is not sub-
25 ject to challenge by protest to the Government Ac-

1 countability Office under sections 3551 and 3556 of
2 title 31, United States Code, or to the Court of Fed-
3 eral Claims, under section 1491 of title 28, United
4 States Code. An agency shall immediately advise the
5 Congress of the exercise of the authority granted
6 under this paragraph.

7 (2) GOVERNMENT CONTRACTING EXEMPTION.—
8 The competition requirement under section 253(a)
9 of title 41, United States Code, may be waived or
10 modified by a Federal agency for any procurement
11 conducted to implement this title or the amendments
12 made by this title if the senior procurement execu-
13 tive for the agency conducting the procurement—

14 (A) determines that the waiver or modi-
15 fication is necessary; and

16 (B) submits an explanation for such deter-
17 mination to the Committee on Homeland Secu-
18 rity and Governmental Affairs of the Senate
19 and the Committee on Homeland Security of
20 the House of Representatives.

21 (3) HIRING RULES EXEMPTION.—Notwith-
22 standing any other provision of law, the Secretary is
23 authorized to make term, temporary limited, and
24 part-time appointments of employees who will imple-
25 ment this title and the amendments made by this

1 title without regard to the number of such employ-
2 ees, their ratio to permanent full-time employees,
3 and the duration of their employment. Nothing in
4 chapter 71 of title 5, United States Code, shall af-
5 fect the authority of any Department management
6 official to hire term, temporary limited or part-time
7 employees under this paragraph.

8 (b) **AUTHORITY TO WAIVE ANNUITY LIMITATIONS.**—
9 Section 824(g)(2)(B) of the Foreign Service Act of 1980
10 (22 U.S.C. 4064(g)(2)(B)) is amended by striking “2009”
11 and inserting “2017”.

12 (c) **AUTHORITY TO ACQUIRE LEASEHOLDS.**—Not-
13 withstanding any other provision of law, the Secretary
14 may acquire a leasehold interest in real property, and may
15 provide in a lease entered into under this subsection for
16 the construction or modification of any facility on the
17 leased property, if the Secretary determines that the ac-
18 quisition of such interest, and such construction or modi-
19 fication, are necessary in order to facilitate the implemen-
20 tation of this title and the amendments made by this title.

21 **SEC. 2109. LONG-TERM LEGAL RESIDENTS OF THE COM-**
22 **MONWEALTH OF THE NORTHERN MARIANA**
23 **ISLANDS.**

24 Section (6)(e) of the Joint Resolution entitled “A
25 Joint Resolution to approve the ‘Covenant to Establish a

1 Commonwealth of the Northern Mariana Islands in Polit-
2 ical Union with the United States of America’, and for
3 other purposes”, approved March 24, 1976 (48 U.S.C.
4 1806(e)), as added by section 702 of the Consolidated
5 Natural Resources Act of 2008 (Public Law 110–229; 122
6 Stat. 854), is amended by adding at the end the following:

7 “(6) SPECIAL PROVISION REGARDING LONG-
8 TERM RESIDENTS OF THE COMMONWEALTH.—

9 “(A) CNMI-ONLY RESIDENT STATUS.—
10 Notwithstanding paragraph (1), an alien de-
11 scribed in subparagraph (B) may, upon the ap-
12 plication of the alien, be admitted as an immi-
13 grant to the Commonwealth subject to the fol-
14 lowing rules:

15 “(i) The alien shall be treated as an
16 immigrant lawfully admitted for permanent
17 residence in the Commonwealth only, in-
18 cluding permitting entry to and exit from
19 the Commonwealth, until the earlier of the
20 date on which—

21 “(I) the alien ceases to perma-
22 nently reside in the Commonwealth;
23 or

24 “(II) the alien’s status is ad-
25 justed under this paragraph or section

245 of the Immigration and Nation-
ality Act (8 U.S.C. 1255) to that of
an alien lawfully admitted for perma-
nent residence in accordance with all
applicable eligibility requirements.

6 “(ii) The Secretary of Homeland Se-
7 curity shall establish a process for such
8 aliens to apply for CNMI-only permanent
9 resident status during the 90-day period
10 beginning on the first day of the sixth
11 month after the date of the enactment of
12 this paragraph.

13 “(iii) Nothing in this subparagraph
14 may be construed to provide any alien sta-
15 tus under this subparagraph with public
16 assistance to which the alien is not other-
17 wise entitled.

18 “(B) ALIENS DESCRIBED.—An alien is de-
19 scribed in this subparagraph if the alien—

20 “(i) is lawfully present in the Com-
21 monwealth under the immigration laws of
22 the United States;

23 “(ii) is otherwise admissible to the
24 United States under the Immigration and
25 Nationality Act (8 U.S.C. 1101 et seq.);

1 “(iii) resided continuously and law-
2 fully in the Commonwealth from November
3 28, 2009, through the date of the enact-
4 ment of this paragraph;

5 “(iv) is not a citizen of the Republic
6 of the Marshall Islands, the Federated
7 States of Micronesia, or the Republic of
8 Palau; and

9 “(v)(I) was born in the Northern
10 Mariana Islands between January 1, 1974
11 and January 9, 1978;

12 “(II) was, on May 8, 2008, and con-
13 tinues to be as of the date of the enact-
14 ment of this paragraph, a permanent resi-
15 dent (as defined in section 4303 of title 3
16 of the Northern Mariana Islands Common-
17 wealth Code, in effect on May 8, 2008);

18 “(III) is the spouse or child (as de-
19 fined in section 101(b)(1) of the Immigra-
20 tion and Nationality Act (8 U.S.C.
21 1101(b)(1))), of an alien described in sub-
22 clauses (I) or (II);

23 “(IV) was, on May 8, 2008, an imme-
24 diate relative (as defined in section 4303 of
25 title 3 of the Northern Mariana Islands

1 Commonwealth Code, in effect on May 8,
2 2008, of a United States citizen, notwith-
3 standing the age of the United States cit-
4 izen, and continues to be such an imme-
5 diate relative on the date of the application
6 described in subparagraph (A);

7 “(V) resided in the Northern Mariana
8 Islands as a guest worker under Common-
9 wealth immigration law for at least 5 years
10 before May 8, 2008 and is presently resi-
11 dent under CW-1 status; or

12 “(VI) is the spouse or child (as de-
13 fined in section 101(b)(1) of the Immigra-
14 tion and Nationality Act (8 U.S.C.
15 1101(b)(1))), of the alien guest worker de-
16 scribed in subclause (V) and is presently
17 resident under CW-2 status.

18 “(C) ADJUSTMENT FOR LONG TERM AND
19 PERMANENT RESIDENTS.—Beginning on the
20 date that is 5 years after the date of the enact-
21 ment of the Border Security, Economic Oppor-
22 tunity, and Immigration Modernization Act, an
23 alien described in subparagraph (B) may apply
24 to receive an immigrant visa or to adjust his or

1 her status to that of an alien lawfully admitted
2 for permanent residence.”.

3 **SEC. 2110. RULEMAKING.**

4 (a) IN GENERAL.—Not later than 1 year after the
5 date of the enactment of this Act, the Secretary, the Attor-
6 ney General, and the Secretary of State separately shall
7 issue interim final regulations to implement this subtitle
8 and the amendments made by this subtitle, which shall
9 take effect immediately upon publication in the Federal
10 Register.

11 (b) APPLICATION PROCEDURES; PROCESSING FEES;
12 DOCUMENTATION.—The interim final regulations issued
13 under subsection (a) shall include—

14 (1) the procedures by which an alien, and the
15 dependent spouse and children of such alien may
16 apply for status under section 245B of the Immigra-
17 tion and Nationality Act, as added by section 2101
18 of this Act, as a registered provisional immigrant or
19 a registered provisional immigrant dependent, as ap-
20 plicable, including the evidence required to dem-
21 onstrate eligibility for such status or to be included
22 in each application for such status;

23 (2) the criteria to be used by the Secretary to
24 determine—

1 (A) the maximum processing fee payable
2 under sections 245B(c)(10)(B) and
3 245C(c)(5)(A) of such Act by a family, includ-
4 ing spouses and unmarried children younger
5 than 21 years of age; and

6 (B) which individuals will be exempt from
7 such fees;

8 (3) the documentation required to be submitted
9 by the applicant to demonstrate compliance with sec-
10 tion 245C(b)(3) of such Act; and

11 (4) the procedures for a registered provisional
12 immigrant to apply for adjustment of status under
13 section 245C or 245D of such Act, including the evi-
14 dence required to be submitted with such application
15 to demonstrate the applicant's eligibility for such ad-
16 justment.

17 (c) EXEMPTION FROM NATIONAL ENVIRONMENTAL
18 POLICY ACT.—Any decision by the Secretary concerning
19 any rulemaking action, plan, or program described in this
20 section shall not be considered to be a major Federal ac-
21 tion subject to review under the National Environmental
22 Policy Act of 1969 (42 U.S.C. 4321 et seq.).

23 **SEC. 2111. STATUTORY CONSTRUCTION.**

24 Except as specifically provided, nothing in this sub-
25 title, or any amendment made by this subtitle, may be con-

1 strued to create any substantive or procedural right or
2 benefit that is legally enforceable by any party against the
3 United States or its agencies or officers or any other per-
4 son.

5 **Subtitle B—Agricultural Worker** 6 **Program**

7 **SEC. 2201. SHORT TITLE.**

8 This subtitle may be cited as the “Agricultural Work-
9 er Program Act of 2013”.

10 **SEC. 2202. DEFINITIONS.**

11 In this subtitle:

12 (1) BLUE CARD STATUS.—The term “blue card
13 status” means the status of an alien who has been
14 lawfully admitted into the United States for tem-
15 porary residence under section 2211.

16 (2) AGRICULTURAL EMPLOYMENT.—The term
17 “agricultural employment” has the meaning given
18 such term in section 3 of the Migrant and Seasonal
19 Agricultural Worker Protection Act (29 U.S.C.
20 1802), without regard to whether the specific service
21 or activity is temporary or seasonal.

22 (3) CHILD.—The term “child” has the meaning
23 given the term in section 101(b)(1) of the Immigra-
24 tion and Nationality Act (8 U.S.C. 1101(b)(1)).

1 (4) EMPLOYER.—The term “employer” means
2 any person or entity, including any farm labor con-
3 tractor and any agricultural association, that em-
4 ploys workers in agricultural employment.

5 (5) QUALIFIED DESIGNATED ENTITY.—The
6 term “qualified designated entity” means—

7 (A) a qualified farm labor organization or
8 an association of employers designated by the
9 Secretary; or

10 (B) any other entity that the Secretary
11 designates as having substantial experience,
12 demonstrated competence, and a history of
13 long-term involvement in the preparation and
14 submission of application for adjustment of sta-
15 tus under title II of the Immigration and Na-
16 tionality Act (8 U.S.C. 1151 et seq.).

17 (6) WORK DAY.—The term “work day” means
18 any day in which the individual is employed 5.75 or
19 more hours in agricultural employment.

1 **CHAPTER 1—PROGRAM FOR EARNED STA-**
2 **TUS ADJUSTMENT OF AGRICULTURAL**
3 **WORKERS**

4 **Subchapter A—Blue Card Status**

5 **SEC. 2211. REQUIREMENTS FOR BLUE CARD STATUS.**

6 (a) REQUIREMENTS FOR BLUE CARD STATUS.—Not-
7 withstanding any other provision of law, the Secretary,
8 after conducting the national security and law enforce-
9 ment clearances required under section 245B(c)(4), may
10 grant blue card status to an alien who—

11 (1)(A) performed agricultural employment in
12 the United States for not fewer than 575 hours or
13 100 work days during the 2-year period ending on
14 December 31, 2012; or

15 (B) is the spouse or child of an alien described
16 in subparagraph (A);

17 (2) submits a completed application before the
18 end of the period set forth in subsection (b)(2); and

19 (3) is not ineligible under paragraph (3) or (4)
20 of section 245B(b) of the Immigration and Nation-
21 ality Act (other than a nonimmigrant alien admitted
22 to the United States for agricultural employment de-
23 scribed in section 101(a)(15)(H)(ii)(a) of such Act.

24 (b) APPLICATION.—

1 (1) IN GENERAL.—An alien who meets the eli-
2 gibility requirements set forth in subsection (a)(1),
3 may apply for blue card status and that alien’s
4 spouse or child may apply for blue card status as a
5 dependent, by submitting a completed application
6 form to the Secretary during the application period
7 set forth in paragraph (2) in accordance with the
8 final rule promulgated by the Secretary pursuant to
9 subsection (e).

10 (2) SUBMISSION.—The Secretary shall provide
11 that the alien shall be able to submit an application
12 under paragraph (1)—

13 (A) if the applicant is represented by an
14 attorney or a nonprofit religious, charitable, so-
15 cial service, or similar organization recognized
16 by the Board of Immigration Appeals under
17 section 292.2 of title 8, Code of Federal Regu-
18 lations; or

19 (B) to a qualified entity if the applicant
20 consents to the forwarding of the application to
21 the Secretary.

22 (3) APPLICATION PERIOD.—

23 (A) INITIAL PERIOD.—Except as provided
24 in subparagraph (B), the Secretary may only
25 accept applications for blue card status for a 1-

1 year period from aliens in the United States be-
2 ginning on the date on which the final rule is
3 published in the Federal Register pursuant to
4 subsection (f), except that qualified non-
5 immigrants who have participated in the H-2A
6 Program may apply from outside of the United
7 States.

8 (B) EXTENSION.—If the Secretary deter-
9 mines, during the initial period described in
10 subparagraph (A), that additional time is re-
11 quired to process applications for blue card sta-
12 tus or for other good cause, the Secretary may
13 extend the period for accepting applications for
14 an additional 18 months.

15 (4) APPLICATION FORM.—

16 (A) REQUIRED INFORMATION.—The appli-
17 cation form referred to in paragraph (1) shall
18 collect such information as the Secretary deter-
19 mines necessary and appropriate.

20 (B) FAMILY APPLICATION.—The Secretary
21 shall establish a process through which an alien
22 may submit a single application under this sec-
23 tion on behalf of the alien, his or her spouse,
24 and his or her children, who are residing in the
25 United States.

1 (C) INTERVIEW.—The Secretary may
2 interview applicants for blue card status to de-
3 termine whether they meet the eligibility re-
4 quirements set forth in subsection (a)(1).

5 (5) ALIENS APPREHENDED BEFORE OR DURING
6 THE APPLICATION PERIOD.—If an alien, who is ap-
7 prehended during the period beginning on the date
8 of the enactment of this Act and ending on the ap-
9 plication period described in paragraph (3), appears
10 prima facie eligible for blue card status, the Sec-
11 retary—

12 (A) shall provide the alien with a reason-
13 able opportunity to file an application under
14 this section during such application period; and

15 (B) may not remove the individual until a
16 final administrative determination is made on
17 the application.

18 (6) SUSPENSION OF REMOVAL DURING APPLI-
19 CATION PERIOD.—

20 (A) PROTECTION FROM DETENTION OR
21 REMOVAL.—An alien granted blue card status
22 may not be detained by the Secretary or re-
23 moved from the United States unless—

24 (i) such alien is, or has become, ineli-
25 gible for blue card status; or

1 (ii) the alien's blue card status has
2 been revoked.

3 (B) ALIENS IN REMOVAL PROCEEDINGS.—
4 Notwithstanding any other provision of the Im-
5 migration and Nationality Act (8 U.S.C. 1101
6 et seq.)—

7 (i) if the Secretary determines that an
8 alien, during the period beginning on the
9 date of the enactment of this section and
10 ending on the last day of the application
11 period described in paragraph (2), is in re-
12 moval, deportation, or exclusion pro-
13 ceedings before the Executive Office for
14 Immigration Review and is prima facie eli-
15 gible for blue card status under this sec-
16 tion—

17 (I) the Secretary shall provide
18 the alien with the opportunity to file
19 an application for such status; and

20 (II) upon motion by the Sec-
21 retary and with the consent of the
22 alien or upon motion by the alien, the
23 Executive Office for Immigration Re-
24 view shall—

1 (aa) terminate such pro-
2 ceedings without prejudice to fu-
3 ture proceedings on any basis;
4 and

5 (bb) provide the alien a rea-
6 sonable opportunity to apply for
7 such status; and

8 (ii) if the Executive Office for Immi-
9 gration Review determines that an alien,
10 during the application period described in
11 paragraph (2), is in removal, deportation,
12 or exclusion proceedings before the Execu-
13 tive Office for Immigration Review and is
14 prima facie eligible for blue card status
15 under this section—

16 (I) the Executive Office of Immi-
17 gration Review shall notify the Sec-
18 retary of such determination; and

19 (II) if the Secretary does not dis-
20 pute the determination of prima facie
21 eligibility within 7 days after such no-
22 tification, the Executive Office for Im-
23 migration Review, upon consent of the
24 alien, shall—

1 (aa) terminate such pro-
2 ceedings without prejudice to fu-
3 ture proceedings on any basis;
4 and

5 (bb) permit the alien a rea-
6 sonable opportunity to apply for
7 such status.

8 (C) TREATMENT OF CERTAIN ALIENS.—

9 (i) IN GENERAL.—If an alien who
10 meets the eligibility requirements set forth
11 in subsection (a) is present in the United
12 States and has been ordered excluded, de-
13 ported, or removed, or ordered to depart
14 voluntarily from the United States under
15 any provision of this Act—

16 (I) notwithstanding such order or
17 section 241(a)(5) of the Immigration
18 and Nationality Act (8 U.S.C.
19 1231(a)(5)), the alien may apply for
20 blue card status under this section;
21 and

22 (II) if the alien is granted such
23 status, the alien shall file a motion to
24 reopen the exclusion, deportation, re-
25 moval, or voluntary departure order,

1 which motion shall be granted unless
2 1 or more of the grounds of ineligi-
3 bility is established by clear and con-
4 vincing evidence.

5 (ii) LIMITATIONS ON MOTIONS TO RE-
6 OPEN.—The limitations on motions to re-
7 open set forth in section 240(c)(7) of the
8 Immigration and Nationality Act (8 U.S.C.
9 1229a(c)(7)) shall not apply to motions
10 filed under clause (i)(II).

11 (D) PERIOD PENDING ADJUDICATION OF
12 APPLICATION.—

13 (i) IN GENERAL.—During the period
14 beginning on the date on which an alien
15 applies for blue card status under this sub-
16 section and the date on which the Sec-
17 retary makes a final decision regarding
18 such application, the alien—

19 (I) may receive advance parole to
20 reenter the United States if urgent
21 humanitarian circumstances compel
22 such travel;

23 (II) may not be detained by the
24 Secretary or removed from the United
25 States unless the Secretary makes a

1 prima facie determination that such
2 alien is, or has become, ineligible for
3 blue card status;

4 (III) shall not be considered un-
5 lawfully present for purposes of sec-
6 tion 212(a)(9)(B) of the Immigration
7 and Nationality Act (8 U.S.C.
8 1182(a)(9)(B)); and

9 (IV) shall not be considered an
10 unauthorized alien (as defined in sec-
11 tion 274A(h)(3) of the Immigration
12 and Nationality Act (8 U.S.C.
13 1324a(h)(3))).

14 (ii) EVIDENCE OF APPLICATION FIL-
15 ING.—As soon as practicable after receiv-
16 ing each application for blue card status,
17 the Secretary shall provide the applicant
18 with a document acknowledging the receipt
19 of such application.

20 (iii) CONTINUING EMPLOYMENT.—An
21 employer who knows an alien employee is
22 an applicant for blue card status or will
23 apply for such status once the application
24 period commences is not in violation of sec-
25 tion 274A(a)(2) of the Immigration and

1 Nationality Act (8 U.S.C. 1324a(a)(2)) if
2 the employer continues to employ the alien
3 pending the adjudication of the alien em-
4 ployee's application.

5 (iv) EFFECT OF DEPARTURE.—Sec-
6 tion 101(g) of the Immigration and Na-
7 tionality Act (8 U.S.C. 1101(g)) shall not
8 apply to an alien granted—

9 (I) advance parole under clause
10 (i)(I) to reenter the United States; or
11 (II) blue card status.

12 (7) SECURITY AND LAW ENFORCEMENT CLEAR-
13 ANCES.—

14 (A) BIOMETRIC AND BIOGRAPHIC DATA.—

15 The Secretary may not grant blue card status
16 to an alien or an alien dependent spouse or
17 child under this section unless such alien sub-
18 mits biometric and biographic data in accord-
19 ance with procedures established by the Sec-
20 retary.

21 (B) ALTERNATIVE PROCEDURES.—The
22 Secretary shall provide an alternative procedure
23 for applicants who cannot provide the standard
24 biometric data required under subparagraph
25 (A) because of a physical impairment.

1 (C) CLEARANCES.—

2 (i) DATA COLLECTION.—The Sec-
3 retary shall collect, from each alien apply-
4 ing for status under this section, biometric,
5 biographic, and other data that the Sec-
6 retary determines to be appropriate—

7 (I) to conduct national security
8 and law enforcement clearances; and

9 (II) to determine whether there
10 are any national security or law en-
11 forcement factors that would render
12 an alien ineligible for such status.

13 (ii) PREREQUISITE.—The required
14 clearances described in clause (i)(I) shall
15 be completed before the alien may be
16 granted blue card status.

17 (8) DURATION OF STATUS AND EXTENSION.—

18 (A) IN GENERAL.—After the date that is 8
19 years after the date regulations are published
20 under this section, no alien may remain in blue
21 card status.

22 (B) EXTENSION.—An extension of blue
23 card status may not be granted by the Sec-
24 retary until renewed national security and law
25 enforcement clearances have been completed

1 with respect to the applicant, to the satisfaction
2 of the Secretary.

3 (9) FEES AND PENALTIES.—

4 (A) STANDARD PROCESSING FEE.—

5 (i) IN GENERAL.—Aliens who are 16
6 years of age or older and are applying for
7 blue card status under paragraph (2), or
8 for an extension of such status, shall pay
9 a processing fee to the Department in an
10 amount determined by the Secretary.

11 (ii) RECOVERY OF COSTS.—The proc-
12 essing fee authorized under clause (i) shall
13 be set at a level that is sufficient to recover
14 the full costs of processing the application,
15 including any costs incurred—

16 (I) to adjudicate the application;

17 (II) to take and process bio-
18 metrics;

19 (III) to perform national security
20 and criminal checks, including adju-
21 dication;

22 (IV) to prevent and investigate
23 fraud; and

24 (V) to administer the collection
25 of such fee.

1 (iii) AUTHORITY TO LIMIT FEES.—

2 The Secretary, by regulation, may—

3 (I) limit the maximum processing
4 fee payable under this subparagraph
5 by a family, including spouses and un-
6 married children younger than 21
7 years of age; and

8 (II) exempt defined classes of in-
9 dividuals from the payment of the fee
10 authorized under clause (i).

11 (B) DEPOSIT AND USE OF PROCESSING
12 FEES.—Fees collected pursuant to subpara-
13 graph (A)(i)—

14 (i) shall be deposited into the Immi-
15 gration Examinations Fee Account pursu-
16 ant to section 286(m); and

17 (ii) shall remain available until ex-
18 pended pursuant to section 286(n).

19 (C) PENALTY.—

20 (i) PAYMENT.—In addition to the
21 processing fee required under subpara-
22 graph (A), aliens who are 21 years of age
23 or older and are applying for blue card sta-
24 tus under paragraph (2) shall pay a \$100
25 penalty to the Department.

1 (ii) DEPOSIT.—Penalties collected
2 pursuant to clause (i) shall be deposited
3 into the Comprehensive Immigration Re-
4 form Trust Fund established under section
5 6(a)(1).

6 (10) ADJUDICATION.—

7 (A) FAILURE TO SUBMIT SUFFICIENT EVI-
8 DENCE.—The Secretary shall deny an applica-
9 tion submitted by an alien who fails to sub-
10 mit—

11 (i) requested initial evidence, includ-
12 ing requested biometric data; or

13 (ii) any requested additional evidence
14 by the date required by the Secretary.

15 (B) AMENDED APPLICATION.—An alien
16 whose application for blue card status is denied
17 under subparagraph (A) may file an amended
18 application for such status to the Secretary if
19 the amended application—

20 (i) is filed within the application pe-
21 riod described in paragraph (3); and

22 (ii) contains all the required informa-
23 tion and fees that were missing from the
24 initial application.

25 (11) EVIDENCE OF BLUE CARD STATUS.—

1 (A) IN GENERAL.—The Secretary shall
2 issue documentary evidence of blue card status
3 to each alien whose application for such status
4 has been approved.

5 (B) DOCUMENTATION FEATURES.—Docu-
6 mentary evidence provided under subparagraph
7 (A)—

8 (i) shall be machine-readable and tam-
9 per-resistant, and shall contain a digitized
10 photograph;

11 (ii) shall, during the alien's authorized
12 period of admission, and any extension of
13 such authorized admission, serve as a valid
14 travel and entry document for the purpose
15 of applying for admission to the United
16 States;

17 (iii) may be accepted during the pe-
18 riod of its validity by an employer as evi-
19 dence of employment authorization and
20 identity under section 274A(b)(1)(B) of
21 the Immigration and Nationality Act (8
22 U.S.C. 1324a(b)(1)(B)); and

23 (iv) shall include such other features
24 and information as the Secretary may pre-
25 scribe.

1 (c) TERMS AND CONDITIONS OF BLUE CARD STA-
2 TUS.—

3 (1) CONDITIONS OF BLUE CARD STATUS.—

4 (A) EMPLOYMENT.—Notwithstanding any
5 other provision of law, including section
6 241(a)(7) of the Immigration and Nationality
7 Act (8 U.S.C. 1231(a)(7)), an alien with blue
8 card status shall be authorized to be employed
9 in the United States while in such status.

10 (B) TRAVEL OUTSIDE THE UNITED
11 STATES.—An alien with blue card status may
12 travel outside of the United States and may be
13 admitted, if otherwise admissible, upon return-
14 ing to the United States without having to ob-
15 tain a visa if—

16 (i) the alien is in possession of—

17 (I) valid, unexpired documentary
18 evidence of blue card status that com-
19 plies with subsection (b)(11); or

20 (II) a travel document that has
21 been approved by the Secretary and
22 was issued to the alien after the
23 alien's original documentary evidence
24 was lost, stolen, or destroyed;

1 (ii) the alien's absence from the
2 United States did not exceed 180 days, un-
3 less the alien's failure to timely return was
4 due to extenuating circumstances beyond
5 the alien's control; and

6 (iii) the alien establishes that the alien
7 is not inadmissible under subparagraph
8 (A)(i), (A)(iii), (B), or (C) of section
9 212(a)(3) of the Immigration and Nation-
10 ality Act (8 U.S.C. 1182(a)(3)).

11 (C) ADMISSION.—An alien granted blue
12 card status shall be considered to have been ad-
13 mitted in such status as of the date on which
14 the alien's application was filed.

15 (D) CLARIFICATION OF STATUS.—An alien
16 granted blue card status—

17 (i) is lawfully admitted to the United
18 States; and

19 (ii) may not be classified as a non-
20 immigrant or as an alien who has been
21 lawfully admitted for permanent residence.

22 (2) REVOCATION.—

23 (A) IN GENERAL.—The Secretary may re-
24 voke blue card status at any time after pro-
25 viding appropriate notice to the alien, and after

1 the exhaustion or waiver of all applicable ad-
2 ministrative review procedures under section
3 245E(c) of the Immigration and Nationality
4 Act, as added by section 2104(a) of this Act, if
5 the alien—

6 (i) no longer meets the eligibility re-
7 quirements for blue card status;

8 (ii) knowingly used documentation
9 issued under this section for an unlawful
10 or fraudulent purpose; or

11 (iii) was absent from the United
12 States for—

13 (I) any single period longer than
14 180 days in violation of the require-
15 ment under paragraph (1)(B)(ii); or

16 (II) for more than 180 days in
17 the aggregate during any calendar
18 year, unless the alien's failure to time-
19 ly return was due to extenuating cir-
20 cumstances beyond the alien's control.

21 (B) ADDITIONAL EVIDENCE.—

22 (i) IN GENERAL.—In determining
23 whether to revoke an alien's status under
24 subparagraph (A), the Secretary may re-
25 quire the alien—

1 (I) to submit additional evidence;

2 or

3 (II) to appear for an interview.

4 (ii) EFFECT OF NONCOMPLIANCE.—

5 The status of an alien who fails to comply
6 with any requirement imposed by the Sec-
7 retary under clause (i) shall be revoked un-
8 less the alien demonstrates to the Sec-
9 retary's satisfaction that such failure was
10 reasonably excusable.

11 (C) INVALIDATION OF DOCUMENTATION.—

12 If an alien's blue card status is revoked under
13 subparagraph (A), any documentation issued by
14 the Secretary to such alien under subsection
15 (b)(11) shall automatically be rendered invalid
16 for any purpose except for departure from the
17 United States.

18 (3) INELIGIBILITY FOR PUBLIC BENEFITS.—An
19 alien who has been granted blue card status is not
20 eligible for any Federal means-tested public benefit
21 (as such term is defined in section 403 of the Per-
22 sonal Responsibility and Work Opportunity Rec-
23 onciliation Act of 1996 (8 U.S.C. 1613).

24 (4) TREATMENT OF BLUE CARD STATUS.—A
25 noncitizen granted blue card status shall be consid-

1 ered lawfully present in the United States for all
2 purposes while such noncitizen remains in such sta-
3 tus, except that the noncitizen—

4 (A) is not entitled to the premium assist-
5 ance tax credit authorized under section 36B of
6 the Internal Revenue Code of 1986 for his or
7 her coverage;

8 (B) shall be subject to the rules applicable
9 to individuals who are not lawfully present set
10 forth in subsection (e) of such section;

11 (C) shall be subject to the rules applicable
12 to individuals who are not lawfully present set
13 forth in section 1402(e) of the Patient Protec-
14 tion and Affordable Care Act (42 U.S.C.
15 18071(e)); and

16 (D) shall be subject to the rules applicable
17 to individuals not lawfully present set forth in
18 section 5000A(d)(3) of the Internal Revenue
19 Code of 1986.

20 (5) ADJUSTMENT TO REGISTERED PROVISIONAL
21 IMMIGRANT STATUS.—The Secretary may adjust the
22 status of an alien who has been granted blue card
23 status to the status of a registered provisional immi-
24 grant under section 245B of the Immigration and
25 Nationality Act if the Secretary determines that the

1 alien is unable to fulfill the agricultural service re-
2 quirement set forth in section 245F(a)(1) of such
3 Act.

4 (d) RECORD OF EMPLOYMENT.—

5 (1) IN GENERAL.—Each employer of an alien
6 granted blue card status shall annually provide—

7 (A) a written record of employment to the
8 alien; and

9 (B) a copy of such record to the Secretary
10 of Agriculture.

11 (2) CIVIL PENALTIES.—

12 (A) IN GENERAL.—If the Secretary finds,
13 after notice and an opportunity for a hearing,
14 that an employer of an alien granted blue card
15 status has knowingly failed to provide the
16 record of employment required under paragraph
17 (1) or has provided a false statement of mate-
18 rial fact in such a record, the employer shall be
19 subject to a civil penalty in an amount not to
20 exceed \$500 per violation.

21 (B) LIMITATION.—The penalty under sub-
22 paragraph (A) for failure to provide employ-
23 ment records shall not apply unless the alien
24 has provided the employer with evidence of em-

1 ployment authorization provided under sub-
2 section (c).

3 (C) DEPOSIT OF CIVIL PENALTIES.—Civil
4 penalties collected under this paragraph shall be
5 deposited in the Comprehensive Immigration
6 Reform Trust Fund established under section
7 6(a)(1).

8 (3) TERMINATION OF OBLIGATION.—The obli-
9 gation under paragraph (1) shall terminate on the
10 date that is 8 years after the date of the enactment
11 of this Act.

12 (4) EMPLOYER PROTECTIONS.—

13 (A) USE OF EMPLOYMENT RECORDS.—
14 Copies of employment records or other evidence
15 of employment provided by an alien or by an
16 alien's employer in support of an alien's appli-
17 cation for blue card status may not be used in
18 a civil or criminal prosecution or investigation
19 of that employer under section 274A of the Im-
20 migration and Nationality Act (8 U.S.C.
21 1324a) or the Internal Revenue Code of 1986
22 for the prior unlawful employment of that alien
23 regardless of the adjudication of such applica-
24 tion or reconsideration by the Secretary of such
25 alien's prima facie eligibility determination.

1 Employers that provide unauthorized aliens
2 with copies of employment records or other evi-
3 dence of employment pursuant to an application
4 for blue card status shall not be subject to civil
5 and criminal liability pursuant to such section
6 274A for employing such unauthorized aliens.

7 (B) LIMIT ON APPLICABILITY.—The pro-
8 tections for employers and aliens under sub-
9 paragraph (A) shall not apply if the aliens or
10 employers submit employment records that are
11 deemed to be fraudulent.

12 (e) RULEMAKING.—Not later than 1 year after the
13 date of the enactment of this Act, the Secretary, in con-
14 sultation with the Secretary of Agriculture, shall issue
15 final regulations to implement this chapter.

16 **SEC. 2212. ADJUSTMENT TO PERMANENT RESIDENT STA-**
17 **TUS.**

18 (a) IN GENERAL.—Chapter 5 of title II (8 U.S.C.
19 1255 et seq.) is amended by inserting after section 245E,
20 as added by section 2104 of this Act, the following:

21 **“SEC. 245F. ADJUSTMENT TO PERMANENT RESIDENT STA-**
22 **TUS FOR AGRICULTURAL WORKERS.**

23 “(a) IN GENERAL.—Except as provided in subsection
24 (b), and not earlier than 5 years after the date of the en-
25 actment of the Border Security, Economic Opportunity,

1 and Immigration Modernization Act, the Secretary shall
2 adjust the status of an alien granted blue card status to
3 that of an alien lawfully admitted for permanent residence
4 if the Secretary determines that the following require-
5 ments are satisfied:

6 “(1) QUALIFYING EMPLOYMENT.—Except as
7 provided in paragraph (3), the alien—

8 “(A) during the 8-year period beginning on
9 the date of the enactment of the Border Secu-
10 rity, Economic Opportunity, and Immigration
11 Modernization Act, performed not less than 100
12 work days of agricultural employment during
13 each of 5 years; or

14 “(B) during the 5-year period beginning on
15 such date of enactment, performed not less
16 than 150 work days of agricultural employment
17 during each of 3 years.

18 “(2) EVIDENCE.—An alien may demonstrate
19 compliance with the requirement under paragraph
20 (1) by submitting—

21 “(A) the record of employment described
22 in section 2211(d) of the Border Security, Eco-
23 nomic Opportunity, and Immigration Mod-
24 ernization Act;

1 “(B) documentation that may be submitted
2 under subsection (e)(4); or

3 “(C) any other documentation designated
4 by the Secretary for such purpose.

5 “(3) EXTRAORDINARY CIRCUMSTANCES.—

6 “(A) IN GENERAL.—In determining wheth-
7 er an alien has met the requirement under
8 paragraph (1), the Secretary may credit the
9 alien with not more than 12 additional months
10 of agricultural employment in the United States
11 to meet such requirement if the alien was un-
12 able to work in agricultural employment due
13 to—

14 “(i) pregnancy, disabling injury, or
15 disease that the alien can establish through
16 medical records;

17 “(ii) illness, disease, or other special
18 needs of a child that the alien can establish
19 through medical records;

20 “(iii) severe weather conditions that
21 prevented the alien from engaging in agri-
22 cultural employment for a significant pe-
23 riod of time; or

1 “(iv) termination from agricultural
2 employment, if the Secretary determines
3 that—

4 “(I) the termination was without
5 just cause; and

6 “(II) the alien was unable to find
7 alternative agricultural employment
8 after a reasonable job search.

9 “(B) EFFECT OF DETERMINATION.—A de-
10 termination under subparagraph (A)(iv), with
11 respect to an alien, shall not be conclusive,
12 binding, or admissible in a separate or subse-
13 quent judicial or administrative action or pro-
14 ceeding between the alien and a current or
15 prior employer of the alien or any other party.

16 “(4) APPLICATION PERIOD.—The alien applies
17 for adjustment of status before the alien’s blue card
18 status expires.

19 “(5) FINE.—The alien pays a fine of \$400 to
20 the Secretary, which shall be deposited into the
21 Comprehensive Immigration Reform Trust Fund es-
22 tablished under section 6(a)(1) of the Border Secu-
23 rity, Economic Opportunity, and Immigration Mod-
24 ernization Act.

1 “(b) GROUNDS FOR DENIAL OF ADJUSTMENT OF
2 STATUS.—

3 “(1) IN GENERAL.—The Secretary may not ad-
4 just the status of an alien granted blue card status
5 if the alien—

6 “(A) is no longer eligible for blue card sta-
7 tus; or

8 “(B) failed to perform the qualifying em-
9 ployment requirement under subsection (a)(1),
10 considering any amount credited by the Sec-
11 retary under subsection (a)(3).

12 “(2) MAINTENANCE OF WAIVERS OF INADMIS-
13 SIBILITY.—The grounds of inadmissibility set forth
14 in section 212(a) that were previously waived for the
15 alien or made inapplicable shall not apply for pur-
16 poses of the alien’s adjustment of status under this
17 section.

18 “(3) PENDING REVOCATION PROCEEDINGS.—If
19 the Secretary has notified the applicant that the
20 Secretary intends to revoke the applicant’s blue card
21 status, the Secretary may not approve an application
22 for adjustment of status under this section unless
23 the Secretary makes a final determination not to re-
24 voke the applicant’s status.

25 “(4) PAYMENT OF TAXES.—

1 “(A) IN GENERAL.—An applicant may not
2 file an application for adjustment of status
3 under this section unless the applicant has sat-
4 isfied any applicable Federal tax liability.

5 “(B) DEFINITION OF APPLICABLE FED-
6 ERAL TAX LIABILITY.—In this paragraph, the
7 term ‘applicable federal tax liability’ means all
8 Federal income taxes assessed in accordance
9 with section 6203 of the Internal Revenue Code
10 of 1986 since the date on which the applicant
11 was authorized to work in the United States in
12 blue card status.

13 “(C) COMPLIANCE.—The applicant may
14 demonstrate compliance with subparagraph (A)
15 by submitting such documentation as the Sec-
16 retary, in consultation with the Secretary of the
17 Treasury, may require by regulation.

18 “(c) SPOUSES AND CHILDREN.—Notwithstanding
19 any other provision of law, the Secretary shall grant per-
20 manent resident status to the spouse or child of an alien
21 whose status was adjusted under subsection (a) if—

22 “(1) the spouse or child (including any indi-
23 vidual who was a child on the date such alien was
24 granted blue card status) applies for such status;

1 “(2) the principal alien includes the spouse and
2 children in an application for adjustment of status
3 to that of a lawful permanent resident; and

4 “(3) the spouse or child is not ineligible for
5 such status under section 245B.

6 “(d) NUMERICAL LIMITATIONS DO NOT APPLY.—
7 The numerical limitations under sections 201 and 202
8 shall not apply to the adjustment of aliens to lawful per-
9 manent resident status under this section.

10 “(e) SUBMISSION OF APPLICATIONS.—

11 “(1) INTERVIEW.—The Secretary may interview
12 applicants for adjustment of status under this sec-
13 tion to determine whether they meet the eligibility
14 requirements set forth in this section.

15 “(2) FEES.—

16 “(A) IN GENERAL.—Applicants for adjust-
17 ment of status under this section shall pay a
18 processing fee to the Secretary in an amount
19 that will ensure the recovery of the full costs of
20 adjudicating such applications, including—

21 “(i) the cost of taking and processing
22 biometrics;

23 “(ii) expenses relating to prevention
24 and investigation of fraud; and

1 “(iii) costs relating to the administra-
2 tion of the fees collected.

3 “(B) AUTHORITY TO LIMIT FEES.—The
4 Secretary, by regulation—

5 “(i) may limit the maximum proc-
6 essing fee payable under this paragraph by
7 a family, including spouses and unmarried
8 children younger than 21 years of age; and

9 “(ii) may exempt individuals described
10 in section 245B(c)(10) and other defined
11 classes of individuals from the payment of
12 the fee under subparagraph (A).

13 “(3) DISPOSITION OF FEES.—All fees collected
14 under paragraph (2)(A)—

15 “(A) shall be deposited into the Immigra-
16 tion Examinations Fee Account pursuant to
17 section 286(m); and

18 “(B) shall remain available until expended
19 pursuant to section 286(n).

20 “(4) DOCUMENTATION OF WORK HISTORY.—

21 “(A) BURDEN OF PROOF.—An alien apply-
22 ing for blue card status under section 2211 of
23 the Border Security, Economic Opportunity,
24 and Immigration Modernization Act or for ad-
25 justment of status under subsection (a) shall

1 provide evidence that the alien has worked the
2 requisite number of hours or days required
3 under subsection (a)(1) of such section 2211 or
4 subsection (a)(3) of this section, as applicable.

5 “(B) TIMELY PRODUCTION OF RECORDS.—

6 If an employer or farm labor contractor employ-
7 ing such an alien has kept proper and adequate
8 records respecting such employment, the alien’s
9 burden of proof under subparagraph (A) may
10 be met by securing timely production of those
11 records under regulations to be promulgated by
12 the Secretary.

13 “(C) SUFFICIENT EVIDENCE.—An alien
14 may meet the burden of proof under subpara-
15 graph (A) to establish that the alien has per-
16 formed the days or hours of work referred to in
17 subparagraph (A) by producing sufficient evi-
18 dence to show the extent of that employment as
19 a matter of just and reasonable inference.

20 “(f) PENALTIES FOR FALSE STATEMENTS IN APPLI-
21 CATIONS.—

22 “(1) CRIMINAL PENALTY.—Any person who—

23 “(A) files an application for blue card sta-
24 tus under section 2211 of the Border Security,
25 Economic Opportunity, and Immigration Mod-

1 ernization Act or an adjustment of status under
2 this section and knowingly and willfully fal-
3 sifies, conceals, or covers up a material fact or
4 makes any false, fictitious, or fraudulent state-
5 ments or representations, or makes or uses any
6 false writing or document knowing the same to
7 contain any false, fictitious, or fraudulent state-
8 ment or entry; or

9 “(B) creates or supplies a false writing or
10 document for use in making such an applica-
11 tion,

12 shall be fined in accordance with title 18, United
13 States Code, imprisoned not more than 5 years, or
14 both.

15 “(2) INADMISSIBILITY.—An alien who is con-
16 victed of a crime under paragraph (1) shall be
17 deemed inadmissible to the United States on the
18 ground described in section 212(a)(6)(C)(i).

19 “(3) DEPOSIT.—Fines collected under para-
20 graph (1) shall be deposited into the Comprehensive
21 Immigration Reform Trust Fund established under
22 section 6(a)(1) of the Border Security, Economic
23 Opportunity, and Immigration Modernization Act.

24 “(g) ELIGIBILITY FOR LEGAL SERVICES.—Section
25 504(a)(11) of the Departments of Commerce, Justice, and

1 State, the Judiciary, and Related Agencies Appropriations
2 Act, 1996 (Public Law 104–134; 110 Stat. 1321–55) may
3 not be construed to prevent a recipient of funds under the
4 Legal Services Corporation Act (42 U.S.C. 2996 et seq.)
5 from providing legal assistance directly related to an appli-
6 cation for blue card status under section 2211 of the Bor-
7 der Security, Economic Opportunity, and Immigration
8 Modernization Act, to an individual who has been granted
9 blue card status, or for an application for an adjustment
10 of status under this section.

11 “(h) ADMINISTRATIVE AND JUDICIAL REVIEW.—
12 Aliens applying for blue card status under section 2211
13 of the Border Security, Economic Opportunity, and Immi-
14 gration Modernization Act or adjustment to permanent
15 resident status under this section shall be entitled to the
16 rights and subject to the conditions applicable to other
17 classes of aliens under sections 242(h) and 245E.

18 “(i) APPLICABILITY OF OTHER PROVISIONS.—The
19 provisions set forth in section 245E which are applicable
20 to aliens described in section 245B, 245C, and 245D shall
21 apply to aliens applying for blue card status under section
22 2211 of the Border Security, Economic Opportunity, and
23 Immigration Modernization Act or adjustment to perma-
24 nent resident status under this section.

1 “(j) LIMITATION ON BLUE CARD STATUS.—An alien
2 granted blue card status under section 2211 of the Border
3 Security, Economic Opportunity, and Immigration Mod-
4 ernization Act may only adjust status to an alien lawfully
5 admitted for permanent residence under this section, sec-
6 tion 245C of this Act, or section 2302 of the Border Secu-
7 rity, Economic Opportunity, and Immigration Moderniza-
8 tion Act.

9 “(k) DEFINITIONS.—In this section:

10 “(1) BLUE CARD STATUS.—The term ‘blue card
11 status’ means the status of an alien who has been
12 lawfully admitted into the United States for tem-
13 porary residence under section 2211 of the Border
14 Security, Economic Opportunity, and Immigration
15 Modernization Act.

16 “(2) AGRICULTURAL EMPLOYMENT.—The term
17 ‘agricultural employment’ has the meaning given
18 such term in section 3 of the Migrant and Seasonal
19 Agricultural Worker Protection Act (29 U.S.C.
20 1802), without regard to whether the specific service
21 or activity is temporary or seasonal.

22 “(3) EMPLOYER.—The term ‘employer’ means
23 any person or entity, including any farm labor con-
24 tractor and any agricultural association, that em-
25 ploys workers in agricultural employment.

1 “(4) WORK DAY.—The term ‘work day’ means
2 any day in which the individual is employed 5.75 or
3 more hours in agricultural employment.”.

(b) CONFORMING AMENDMENT.—Section 201(b)(1) (8 U.S.C. 1151(b)(1), as amended by section 2103(c), is further amended by adding at the end the following:

7 “(G) Aliens granted lawful permanent resi-
8 dent status under section 245F.”.

“Sec. 245F. Adjustment to permanent resident status for agricultural workers.”.

1 a report to Congress that identifies, for the previous fiscal
2 year—

3 (1) the number of aliens who applied for blue
4 card status;

5 (2) the number of aliens who were granted blue
6 card status;

7 (3) the number of aliens who applied for an ad-
8 justment of status pursuant to section 245F(a) of
9 the Immigration and Nationality Act, as added by
10 section 2212; and

11 (4) the number of aliens who received an ad-
12 justment of status pursuant such section 245F(a).

13 **SEC. 2215. AUTHORIZATION OF APPROPRIATIONS.**

14 There are authorized to be appropriated to the Sec-
15 retary such sums as may be necessary to implement this
16 subpart, including any sums needed for costs associated
17 with the initiation of such implementation, for fiscal years
18 2013 and 2014.

19 **Subchapter B—Correction of Social Security**
20 **Records**

21 **SEC. 2221. CORRECTION OF SOCIAL SECURITY RECORDS.**

22 (a) IN GENERAL.—Section 208(e)(1) of the Social
23 Security Act (42 U.S.C. 408(e)(1)) is amended—

24 (1) in subparagraph (B)(ii), by striking “or” at
25 the end;

1 (2) in subparagraph (C), by inserting “or” at
2 the end;

3 (3) by inserting after subparagraph (C) the fol-
4 lowing:

5 “(D) who is granted blue card status
6 under the Agricultural Worker Program Act of
7 2013,”; and

8 (4) by striking “1990.” and inserting “1990, or
9 in the case of an alien described in subparagraph
10 (D), if such conduct is alleged to have occurred be-
11 fore the date on which the alien was granted blue
12 card status under section 2211(a) of the Agricul-
13 tural Worker Program Act of 2013.”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 subsection (a) shall take effect on the first day of the sev-
16 enth month that begins after the date of the enactment
17 of this Act.

18 **CHAPTER 2—NONIMMIGRANT**

19 **AGRICULTURAL VISA PROGRAM**

20 **SEC. 2231. NONIMMIGRANT CLASSIFICATION FOR NON-**
21 **IMMIGRANT AGRICULTURAL WORKERS.**

22 Section 101(a)(15) (8 U.S.C. 1101(a)(15)) is amend-
23 ed by adding at the end the following:

1 “(W) an alien having a residence in a for-
2 eign country who is coming to the United
3 States for a temporary period—

4 “(iii)(I) to perform services or labor in
5 agricultural employment and who has a
6 written contract that specifies the wages,
7 benefits, and working conditions of such
8 full-time employment in an agricultural oc-
9 cupation with a designated agricultural
10 employer for a specified period of time;
11 and

12 “(II) who meets the requirements
13 under section 218A for a nonimmigrant
14 visa described in this clause; or

15 “(iv)(I) to perform services or labor in
16 agricultural employment and who has an
17 offer of full-time employment in an agricul-
18 tural occupation from a designated agricul-
19 tural employer for such employment and is
20 not described in clause (i); and

21 “(II) who meets the requirements
22 under section 218A for a nonimmigrant
23 visa described in this clause.”.

1 **SEC. 2232. ESTABLISHMENT OF NONIMMIGRANT AGRICUL-**
2 **TURAL WORKER PROGRAM.**

3 (a) IN GENERAL.—Chapter 2 of title II (8 U.S.C.
4 211 et seq.) is amended by adding at the end the fol-
5 lowing:

6 **“SEC. 218A. NONIMMIGRANT AGRICULTURAL WORKER PRO-**
7 **GRAM.**

8 “(a) DEFINITIONS.—In this section and in clauses
9 (iii) and (iv) of section 101(a)(15)(W):

10 “(1) AGRICULTURAL EMPLOYMENT.—The term
11 ‘agricultural employment’ has the meaning given
12 such term in section 3 of the Migrant and Seasonal
13 Agricultural Worker Protection Act (29 U.S.C.
14 1802), without regard to whether the specific service
15 or activity is temporary or seasonal.

16 “(2) AT-WILL AGRICULTURAL WORKER.—The
17 term ‘at-will agricultural worker’ means an alien
18 present in the United States pursuant to section
19 101(a)(15)(W)(iv).

20 “(3) BLUE CARD.—The term ‘blue card’ means
21 an employment authorization and travel document
22 issued to an alien granted blue card status under
23 section 2211(a) of the Agricultural Worker Program
24 Act of 2013.

25 “(4) CONTRACT AGRICULTURAL WORKER.—The
26 term ‘contract agricultural worker’ means an alien

1 present in the United States pursuant to section
2 101(a)(15)(W)(iii).

3 “(5) DESIGNATED AGRICULTURAL EM-
4 PLOYER.—The term ‘designated agricultural em-
5 ployer’ means an employer who is registered with
6 the Secretary of Agriculture pursuant to subsection
7 (e)(1).

8 “(6) ELECTRONIC JOB REGISTRY.—The term
9 ‘Electronic Job Registry’ means the Electronic Job
10 Registry of a State workforce agency (or similar suc-
11 cessor registry).

12 “(7) EMPLOYER.—Except as otherwise pro-
13 vided, the term ‘employer’ means any person or enti-
14 ty, including any farm labor contractor and any ag-
15 ricultural association, that employs workers in agri-
16 cultural employment.

17 “(8) NONIMMIGRANT AGRICULTURAL WORK-
18 ER.—The term ‘nonimmigrant agricultural worker’
19 mean a nonimmigrant described in clause (iii) or (iv)
20 of section 101(a)(15)(W).

21 “(9) PROGRAM.—The term ‘Program’ means
22 the Nonimmigrant Agricultural Worker Program es-
23 tablished under subsection (b).

1 “(10) SECRETARY.—Except as otherwise spe-
2 cifically provided, the term ‘Secretary’ means the
3 Secretary of Agriculture.

4 “(11) UNITED STATES WORKER.—The term
5 ‘United States worker’ means an individual who—

6 “(A) is a national of the United States; or

7 “(B) is an alien who—

8 “(i) is lawfully admitted for perma-
9 nent residence;

10 “(ii) is admitted as a refugee under
11 section 207;

12 “(iii) is granted asylum under section
13 208;

14 “(iv) holds a blue card; or

15 “(v) is an immigrant otherwise au-
16 thorized by this Act or by the Secretary of
17 Homeland Security to be employed in the
18 United States.

19 “(b) REQUIREMENTS.—

20 “(1) EMPLOYER.—An employer may not employ
21 an alien for agricultural employment under the Pro-
22 gram unless such employer is a designated agricul-
23 tural employer and complies with the terms of this
24 section.

1 “(2) WORKER.—An alien may not be employed
2 for agricultural employment under the Program un-
3 less such alien is a nonimmigrant agricultural work-
4 er and complies with the terms of this section.

5 “(c) NUMERICAL LIMITATION.—

6 “(1) FIRST 5 YEARS OF PROGRAM.—

7 “(A) IN GENERAL.—Subject to paragraph
8 (2), the worldwide level of visas for non-
9 immigrant agricultural workers for the fiscal
10 year during which the first visa is issued to a
11 nonimmigrant agricultural worker and for each
12 of the following 4 fiscal years shall be equal
13 to—

14 “(i) 112,333; and

15 “(ii) the numerical adjustment made
16 by the Secretary for such fiscal year in ac-
17 cordance with paragraph (2).

18 “(B) QUARTERLY ALLOCATION.—The an-
19 nual allocation of visas described in subpara-
20 graph (A) shall be evenly allocated between the
21 4 quarters of the fiscal year unless the Sec-
22 retary determines that an alternative allocation
23 would better accommodate the seasonal demand
24 for visas. Any unused visas in a quarter shall

1 be added to the allocation for the subsequent
2 quarter of the same fiscal year.

3 “(C) EFFECT OF 2ND OR SUBSEQUENT
4 DESIGNATED AGRICULTURAL EMPLOYER.—A
5 nonimmigrant agricultural worker who has a
6 valid visa issued under this section that counted
7 against the allocation described in subpara-
8 graph (A) shall not be recounted against the al-
9 location if the worker is petitioned for by a sub-
10 sequent designated agricultural employer.

11 “(2) ANNUAL ADJUSTMENTS FOR FIRST 5
12 YEARS OF PROGRAM.—

13 “(A) IN GENERAL.—The Secretary, in con-
14 sultation with the Secretary of Labor, and after
15 reviewing relevant evidence submitted by agri-
16 cultural producers and organizations rep-
17 resenting agricultural workers, may increase or
18 decrease, as appropriate, the worldwide level of
19 visas under paragraph (1) for each of the 5 fis-
20 cal years referred to in paragraph (1) after con-
21 sidering appropriate factors, including—

22 “(i) a demonstrated shortage of agri-
23 cultural workers;

1 “(ii) the level of unemployment and
2 underemployment of agricultural workers
3 during the preceding fiscal year;

4 “(iii) the number of applications for
5 blue card status;

6 “(iv) the number of blue card visa ap-
7 plications approved;

8 “(v) the number of nonimmigrant ag-
9 ricultural workers sought by employers
10 during the preceding fiscal year;

11 “(vi) the estimated number of United
12 States workers, including blue card work-
13 ers, who worked in agriculture during the
14 preceding fiscal year;

15 “(vii) the number of nonimmigrant
16 agricultural workers issued a visa in the
17 most recent fiscal year who remain in the
18 United States in compliance with the terms
19 of such visa;

20 “(viii) the number of United States
21 workers who accepted jobs offered by em-
22 ployers using the Electronic Job Registry
23 during the preceding fiscal year;

24 “(ix) any growth or contraction of the
25 United States agricultural industry that

1 has increased or decreased the demand for
2 agricultural workers; and

3 “(x) any changes in the real wages
4 paid to agricultural workers in the United
5 States as an indication of a shortage or
6 surplus of agricultural labor.

7 “(B) NOTIFICATION; IMPLEMENTATION.—
8 The Secretary shall notify the Secretary of
9 Homeland Security of any change to the world-
10 wide level of visas for nonimmigrant agricul-
11 tural workers. The Secretary of Homeland Se-
12 curity shall implement such changes.

13 “(C) EMERGENCY PROCEDURES.—The
14 Secretary shall establish, by regulation, proce-
15 dures for immediately adjusting an annual allo-
16 cation under paragraph (1) for labor shortages,
17 as determined by the Secretary. The Secretary
18 shall make a decision on a petition for an ad-
19 justment of status not later than 30 days after
20 receiving such petition.

21 “(3) SIXTH AND SUBSEQUENT YEARS OF PRO-
22 GRAM.—The Secretary, in consultation with the Sec-
23 retary of Labor, shall establish the worldwide level
24 of visas for nonimmigrant agricultural workers for
25 each fiscal year following the fiscal years referred to

1 in paragraph (1) after considering appropriate fac-
2 tors, including—

3 “(A) a demonstrated shortage of agricul-
4 tural workers;

5 “(B) the level of unemployment and under-
6 employment of agricultural workers during the
7 preceding fiscal year;

8 “(C) the number of applications for blue
9 card status;

10 “(D) the number of blue card visa applica-
11 tions approved;

12 “(E) the number of nonimmigrant agricul-
13 tural workers sought by employers during the
14 preceding fiscal year;

15 “(F) the estimated number of United
16 States workers, including blue card workers,
17 who worked in agriculture during the preceding
18 fiscal year;

19 “(G) the number of nonimmigrant agricul-
20 tural workers issued a visa in the most recent
21 fiscal year who remain in the United States in
22 compliance with the terms of such visa;

23 “(H) the number of United States workers
24 who accepted jobs offered by employers using

1 the Electronic Job Registry during the pre-
2 ceding fiscal year;

3 “(I) any growth or contraction of the
4 United States agricultural industry that has in-
5 creased or decreased the demand for agricul-
6 tural workers; and

7 “(J) any changes in the real wages paid to
8 agricultural workers in the United States as an
9 indication of a shortage or surplus of agricul-
10 tural labor.

11 “(4) EMERGENCY PROCEDURES.—The Sec-
12 retary shall establish, by regulation, procedures for
13 immediately adjusting an annual allocation under
14 paragraph (3) for labor shortages, as determined by
15 the Secretary. The Secretary shall make a decision
16 on a petition for an adjustment of status not later
17 than 30 days after receiving such petition

18 “(d) REQUIREMENTS FOR NONIMMIGRANT AGRICUL-
19 TURAL WORKERS.—

20 “(1) ELIGIBILITY FOR NONIMMIGRANT AGRI-
21 CULTURAL WORKER STATUS.—

22 “(A) IN GENERAL.—An alien is not eligible
23 to be admitted to the United States as a non-
24 immigrant agricultural worker if the alien—

1 “(i) violated a material term or condi-
2 tion of a previous admission as a non-
3 immigrant agricultural worker during the
4 most recent 3-year period (other than a
5 contract agricultural worker who volun-
6 tarily abandons his or her employment be-
7 fore the end of the contract period or
8 whose employment is terminated by the
9 employer for cause);

10 “(ii) has not obtained successful clear-
11 ance of any security and criminal back-
12 ground checks required by the Secretary of
13 Homeland Security or any other examina-
14 tion required under this Act; or

15 “(iii)(I) departed from the United
16 States while subject to an order of exclu-
17 sion, deportation, or removal, or pursuant
18 to an order of voluntary departure; and

19 “(II)(aa) is outside of the United
20 States; or

21 “(bb) has reentered the United States
22 illegally after December 31, 2012 without
23 receiving consent to the alien’s reapplica-
24 tion for admission under section 212(a)(9).

1 “(B) WAIVER.—The Secretary of Home-
2 land Security may waive the application of sub-
3 paragraph (A)(iii) on behalf of an alien if the
4 alien—

5 “(i) is the spouse or child of a United
6 States citizen or lawful permanent resi-
7 dent;

8 “(ii) is the parent of a child who is a
9 United States citizen or lawful permanent
10 resident;

11 “(iii) meets the requirements set forth
12 in clause (ii) or (iii) of section
13 245D(b)(1)(A); or

14 “(iv)(I) meets the requirements set
15 forth in section 245D(b)(1)(A)(ii);

16 “(II) is 16 years or older on the date
17 on which the alien applies for non-
18 immigrant agricultural status; and

19 “(III) was physically present in the
20 United States for an aggregate period of
21 not less than 3 years during the 6-year pe-
22 riod immediately preceding the date of the
23 enactment of this section.

24 “(2) TERM OF STAY FOR NONIMMIGRANT AGRI-
25 CULTURAL WORKERS.—

1 “(A) IN GENERAL.—

2 “(i) INITIAL ADMISSION.—A non-
3 immigrant agricultural worker may be ad-
4 mitted into the United States in such sta-
5 tus for an initial period of 3 years.

6 “(ii) RENEWAL.—A nonimmigrant ag-
7 ricultural worker may renew such worker’s
8 period of admission in the United States
9 for 1 additional 3-year period.

10 “(B) BREAK IN PRESENCE.—A non-
11 immigrant agricultural worker who has been
12 admitted to the United States for 2 consecutive
13 periods under subparagraph (A) is ineligible to
14 renew the alien’s nonimmigrant agricultural
15 worker status until such alien—

16 “(i) returns to a residence outside the
17 United States for a period of not less than
18 3 months; and

19 “(ii) seeks to reenter the United
20 States under the terms of the Program as
21 a nonimmigrant agricultural worker.

22 “(3) LOSS OF STATUS.—

23 “(A) IN GENERAL.—An alien admitted as
24 a nonimmigrant agricultural worker shall be in-

1 eligible for such status and shall be required to
2 depart the United States if such alien—

3 “(i) after the completion of his or her
4 contract with a designated agricultural em-
5 ployer, is not employed in agricultural em-
6 ployment by a designated agricultural em-
7 ployer; or

8 “(ii) is an at-will agricultural worker
9 and is not continuously employed by a des-
10 ignated agricultural employer in agricul-
11 tural employment as an at-will agricultural
12 worker.

13 “(B) EXCEPTION.—Subject to subpara-
14 graph (C), a nonimmigrant agricultural worker
15 has not violated subparagraph (A) if the non-
16 immigrant agricultural worker is not employed
17 in agricultural employment for a period not to
18 exceed 60 days.

19 “(C) WAIVER.—Notwithstanding subpara-
20 graph (B), the Secretary of Homeland Security
21 may waive the application of clause (i) or (ii) of
22 subparagraph (A) for a nonimmigrant agricul-
23 tural worker who was not employed in agricul-
24 tural employment for a period of more than 60

1 days if such period of unemployment was due
2 to—

3 “(i) the injury of such worker; or

4 “(ii) a natural disaster declared by
5 the Secretary.

6 “(D) TOLLING OF EMPLOYMENT REQUIRE-
7 MENT.—A nonimmigrant agricultural worker
8 may leave the United States for up to 60 days
9 in any fiscal year while in such status. During
10 the period in which the worker is outside of the
11 United States, the 60-day limit specified in sub-
12 paragraph (B) shall be tolled.

13 “(4) PORTABILITY OF STATUS.—

14 “(A) CONTRACT AGRICULTURAL WORK-
15 ERS.—

16 “(i) IN GENERAL.—Except as pro-
17 vided in clause (ii), an alien who entered
18 the United States as a contract agricul-
19 tural worker may—

20 “(I) seek employment as a non-
21 immigrant agricultural worker with a
22 designated agricultural employer other
23 than the designated agricultural em-
24 ployer with whom the employee had a

1 contract described in section
2 101(a)(15)(W)(ii)(I); and

3 “(II) accept employment with
4 such new employer after the date the
5 contract agricultural worker completes
6 such contract.

7 “(ii) VOLUNTARY ABANDONMENT;
8 TERMINATION FOR CAUSE.—A contract ag-
9 ricultural worker who voluntarily abandons
10 his or her employment before the end of
11 the contract period or whose employment
12 is terminated for cause by the employer—

13 “(I) may not accept subsequent
14 employment with another designated
15 agricultural employer without first de-
16 parting the United States and reen-
17 tering pursuant to a new offer of em-
18 ployment; and

19 “(II) is not entitled to the 75
20 percent payment guarantee described
21 in subsection (e)(4)(B).

22 “(iii) TERMINATION BY MUTUAL
23 AGREEMENT.—The termination of an em-
24 ployment contract by mutual agreement of
25 the designated agricultural employer and

1 the contract agricultural worker shall not
2 be considered voluntary abandonment for
3 purposes of clause (ii).

4 “(B) AT-WILL AGRICULTURAL WORK-
5 ERS.—An alien who entered the United States
6 as an at-will agricultural worker may seek em-
7 ployment as an at-will agricultural worker with
8 any other designated agricultural employer re-
9 ferred to in section 101(a)(15)(W)(iii)(I).

10 “(5) PROHIBITION ON GEOGRAPHIC LIMITA-
11 TION.—A nonimmigrant visa issued to a non-
12 immigrant agricultural worker—

13 “(A) shall not limit the geographical area
14 within which such worker may be employed;

15 “(B) shall not limit the type of agricultural
16 employment such worker may perform; and

17 “(C) shall restrict such worker to employ-
18 ment with designated agricultural employers.

19 “(6) TREATMENT OF SPOUSES AND CHIL-
20 DREN.—A spouse or child of a nonimmigrant agri-
21 cultural worker—

22 “(A) shall not be entitled to a visa or any
23 immigration status by virtue of the relationship
24 of such spouse or child to such worker; and

1 “(B) may be provided status as a non-
2 immigrant agricultural worker if the spouse or
3 child is independently qualified for such status.

4 “(e) EMPLOYER REQUIREMENTS.—

5 “(1) DESIGNATED AGRICULTURAL EMPLOYER
6 STATUS.—

7 “(A) REGISTRATION REQUIREMENT.—

8 Each employer seeking to employ nonimmigrant
9 agricultural workers shall register for des-
10 ignated agricultural employer status by submit-
11 ting to the Secretary, through the Farm Service
12 Agency in the geographic area of the employer
13 or electronically to the Secretary, a registration
14 that includes—

15 “(i) the employer’s employer identi-
16 fication number; and

17 “(ii) a registration fee, in an amount
18 determined by the Secretary, which shall
19 be used for the costs of administering the
20 program.

21 “(B) CRITERIA.—The Secretary shall
22 grant designated agricultural employer status to
23 an employer who submits a 6registration for
24 such status that includes—

1 “(i) documentation that the employer
2 is engaged in agriculture;

3 “(ii) the estimated number of non-
4 immigrant agricultural workers the em-
5 ployer will need each year;

6 “(iii) the anticipated periods during
7 which the employer will need such workers;
8 and

9 “(iv) documentation establishing need
10 for a specified agricultural occupation or
11 occupations.

12 “(C) DESIGNATION.—

13 “(i) REGISTRATION NUMBER.—The
14 Secretary shall assign each employer that
15 meets the criteria established pursuant to
16 subparagraph (B) with a designated agri-
17 cultural employer registration number.

18 “(ii) TERM OF DESIGNATION.—Each
19 employer granted designated agricultural
20 employer status under this paragraph shall
21 retain such status for a term of 3 years.
22 At the end of such 3-year term, the em-
23 ployer may renew the registration for an-
24 other 3-year term if the employer meets

1 the requirements set forth in subpara-
2 graphs (A) and (B).

3 “(D) ASSISTANCE.—In carrying out the
4 functions described in this subsection, the Sec-
5 retary may work through the Farm Service
6 Agency, or any other agency in the Department
7 of Agriculture—

8 “(i) to assist agricultural employers
9 with the registration process under this
10 paragraph by providing such employers
11 with—

12 “(I) technical assistance and ex-
13 pertise;

14 “(II) internet access for submit-
15 ting such applications; and

16 “(III) a nonelectronic means for
17 submitting such registrations; and

18 “(ii) to provide resources about the
19 Program, including best practices and
20 compliance related assistance and re-
21 sources or training to assist in retention of
22 such workers to agricultural employers.

23 “(E) DEPOSIT OF REGISTRATION FEE.—
24 Fees collected pursuant to subparagraph
25 (A)(ii)—

1 “(i) shall be deposited into the Immi-
2 gration Examinations Fee Account pursu-
3 ant to section 286(m); and

4 “(ii) shall remain available until ex-
5 pended pursuant to section 286(n).

6 “(2) NONIMMIGRANT AGRICULTURAL WORKER
7 PETITION PROCESS.—

8 “(A) IN GENERAL.—Not later than 45
9 days before the date on which nonimmigrant
10 agricultural workers are needed, a designated
11 agricultural employer seeking to employ such
12 workers shall submit a petition to the Secretary
13 of Homeland Security that includes the employ-
14 er’s designated agricultural employer registra-
15 tion number.

16 “(B) ATTESTATION.—An petition sub-
17 mitted under subparagraph (A) shall include an
18 attestation of the following:

19 “(i) The number of named or
20 unnamed nonimmigrant agricultural work-
21 ers the designated agricultural employer is
22 seeking to employ during the applicable pe-
23 riod of employment.

24 “(ii) The total number of contract ag-
25 ricultural workers and of at-will agricul-

1 tural workers the employer will require for
2 each occupational category.

3 “(iii) The anticipated period, includ-
4 ing expected beginning and ending dates,
5 during which such employees will be need-
6 ed.

7 “(iv) Evidence of contracts or written
8 disclosures of employment terms and con-
9 ditions in accordance with the Migrant and
10 Seasonal Agricultural Worker Protection
11 Act (29 U.S.C. 1801 et seq.), which have
12 been disclosed or provided to the non-
13 immigrant agricultural workers, or a sam-
14 ple of such contract or disclosure for
15 unnamed workers.

16 “(v) The information submitted to the
17 State workforce agency pursuant to para-
18 graph (3)(A)(i).

19 “(vi) The record of United States
20 workers described in paragraph (3)(A)(iii)
21 on the date of the request.

22 “(vii) Evidence of offers of employ-
23 ment made to United States workers as re-
24 quired under paragraph (3)(B).

1 “(viii) The employer will comply with
2 the additional program requirements for
3 designated agricultural employers de-
4 scribed in paragraph (4).

5 “(C) EMPLOYMENT AUTHORIZATION WHEN
6 CHANGING EMPLOYERS.—Nonimmigrant agri-
7 cultural workers in the United States who are
8 identified in a petition submitted pursuant to
9 subparagraph (A) and are in lawful status may
10 commence employment with their designated
11 agricultural employer after such employer has
12 submitted such petition to the Secretary of
13 Homeland Security.

14 “(D) REVIEW.—The Secretary of Home-
15 land Security shall review each petition sub-
16 mitted by designated agricultural employers
17 under this paragraph for completeness or obvi-
18 ous inaccuracies. Unless the Secretary of
19 Homeland Security determines that the petition
20 is incomplete or obviously inaccurate, the Sec-
21 retary shall accept the petition. The Secretary
22 shall establish a procedure for the processing of
23 petitions filed under this subsection. Not later
24 than 7 working days after the date of the filing,
25 the Secretary, by electronic or other means as-

1 suring expedited delivery, shall submit a copy of
2 notice of approval or denial of the petition to
3 the petitioner and, in the case of approved peti-
4 tions, to the appropriate immigration officer at
5 the port of entry or United States consulate, as
6 appropriate, if the petitioner has indicated that
7 the alien beneficiary or beneficiaries will apply
8 for a visa or admission to the United States.

9 “(3) EMPLOYMENT OF UNITED STATES WORK-
10 ERS.—

11 “(A) RECRUITMENT.—

12 “(i) FILING A JOB OPPORTUNITY
13 WITH LOCAL OFFICE OF STATE WORK-
14 FORCE AGENCY.—Not later than 60 days
15 before the date on which the employer de-
16 sires to employ a nonimmigrant agricul-
17 tural worker, the employer shall submit the
18 job opportunity for such worker to the
19 local office of the State workforce agency
20 where the job site is located and authorize
21 the posting of the job opportunity on the
22 appropriate Department of Labor Elec-
23 tronic Job Registry for a period of 45
24 days.

1 “(ii) CONSTRUCTION.—Nothing in
2 clause (i) may be construed to cause a
3 posting referred to in clause (i) to be treat-
4 ed as an interstate job order under section
5 653.500 of title 20, Code of Federal Regu-
6 lations (or similar successor regulation).

7 “(iii) RECORD OF UNITED STATES
8 WORKERS.—An employer shall keep a
9 record of all eligible, able, willing, and
10 qualified United States workers who apply
11 for agricultural employment with the em-
12 ployer for the agricultural employment for
13 which the nonimmigrant agricultural non-
14 immigrant workers are sought.

15 “(B) REQUIREMENT TO HIRE.—

16 “(i) UNITED STATES WORKERS.—An
17 employer may not seek a nonimmigrant ag-
18 ricultural worker for agricultural employ-
19 ment unless the employer offers such em-
20 ployment to any equally or better qualified
21 United States worker who will be available
22 at the time and place of need and who ap-
23 plies for such employment during the 45-
24 day recruitment period referred to in sub-
25 paragraph (A)(i).

1 “(ii) EXCEPTION.—Notwithstanding
2 clause (i), the employer may offer the job
3 to a nonimmigrant agricultural worker in-
4 stead of an alien in blue card status if—

5 “(I) such worker was previously
6 employed by the employer as an H-
7 2A worker;

8 “(II) such worker worked for the
9 employer for 3 years during the most
10 recent 4-year period; and

11 “(III) the employer pays such
12 worker the adverse effect wage rate
13 calculated under subsection (f)(5)(B).

14 “(4) ADDITIONAL PROGRAM REQUIREMENTS
15 FOR DESIGNATED AGRICULTURAL EMPLOYERS.—
16 Each designated agricultural employer shall comply
17 with the following requirements:

18 “(A) NO DISPLACEMENT OF UNITED
19 STATES WORKERS.—

20 “(i) IN GENERAL.—The employer
21 shall not displace a United States worker
22 employed by the employer, other than for
23 good cause, during the period of employ-
24 ment of the nonimmigrant agricultural
25 worker and for a period of 30 days pre-

1 ceding such period in the occupation and
2 at the location of employment for which
3 the employer seeks to employ non-
4 immigrant agricultural workers.

5 “(ii) LABOR DISPUTE.—The employer
6 shall not employ a nonimmigrant agricul-
7 tural worker for a specific job for which
8 the employer is requesting a nonimmigrant
9 agricultural worker because the former oc-
10 cupant of the job is on strike or being
11 locked out in the course of a labor dispute.

12 “(B) GUARANTEE OF EMPLOYMENT FOR
13 CONTRACT AGRICULTURAL WORKERS.—

14 “(i) OFFER TO CONTRACT WORKER.—
15 The employer shall guarantee to offer con-
16 tract agricultural workers employment for
17 the hourly equivalent of at least 75 percent
18 of the work days of the total period of em-
19 ployment, beginning with the first work
20 day after the arrival of the worker at the
21 place of employment and ending on the ex-
22 piration date specified in the job offer. In
23 this clause, the term ‘hourly equivalent’
24 means the number of hours in the work
25 days as stated in the job offer and shall ex-

1 clude the worker's Sabbath and Federal
2 holidays. If the employer affords the con-
3 tract agricultural worker less employment
4 than the number of hours required under
5 this subparagraph, the employer shall pay
6 such worker the amount the worker would
7 have earned had the worker worked the
8 guaranteed number of hours.

9 “(ii) FAILURE TO WORK.—Any hours
10 which the worker fails to work, up to a
11 maximum of the number of hours specified
12 in the job offer for a work day, when the
13 worker has been offered an opportunity to
14 do so, and all hours of work actually per-
15 formed (including voluntary work in excess
16 of the number of hours specified in the job
17 offer in a work day, on the worker's Sab-
18 bath, or on Federal holidays) may be
19 counted by the employer in calculating
20 whether the period of guaranteed employ-
21 ment has been met.

22 “(iii) CONTRACT IMPOSSIBILITY.—If,
23 before the expiration of the period of em-
24 ployment specified in the job offer, the
25 services of a contract agricultural worker

1 are no longer required for reasons beyond
2 the control of the employer due to any
3 form of natural disaster, including a flood,
4 hurricane, freeze, earthquake, fire,
5 drought, plant or animal disease or pest
6 infestation, or regulatory drought, before
7 the guarantee in clause (i) is fulfilled, the
8 employer—

9 “(I) may terminate the worker’s
10 employment;

11 “(II) shall fulfill the employment
12 guarantee described in clause (i) for
13 the work days that have elapsed from
14 the first work day after the arrival of
15 the worker to the termination of em-
16 ployment;

17 “(III) shall make efforts to
18 transfer the worker to other com-
19 parable employment acceptable to the
20 worker; and

21 “(IV) if such a transfer does not
22 take place, shall provide the return
23 transportation required under sub-
24 paragraph (J).

25 “(C) WORKERS’ COMPENSATION.—

1 “(i) REQUIREMENT TO PROVIDE.—If
2 a job referred to in paragraph (3) is not
3 covered by the State workers’ compensa-
4 tion law, the employer shall provide, at no
5 cost to the nonimmigrant agricultural
6 worker, insurance covering injury and dis-
7 ease arising out of, and in the course of,
8 such job.

9 “(ii) BENEFITS.—The insurance re-
10 quired to be provided under clause (i) shall
11 provide benefits at least equal to those pro-
12 vided under and pursuant to State’s work-
13 ers’ compensation law for comparable em-
14 ployment.

15 “(D) PROHIBITION FOR USE FOR NON-
16 AGRICULTURAL SERVICES.—The employer may
17 not employ a nonimmigrant agricultural worker
18 for employment other than agricultural employ-
19 ment.

20 “(E) WAGES.—The employer shall pay not
21 less than the wage required under subsection
22 (f).

23 “(F) DEDUCTION OF WAGES.—The em-
24 ployer shall make only deductions from a non-
25 immigrant agricultural worker’s wages that are

1 authorized by law and are reasonable and cus-
2 tomary in the occupation and area of employ-
3 ment of such worker.

4 “(G) REQUIREMENT TO PROVIDE HOUSING
5 OR A HOUSING ALLOWANCE.—

6 “(i) IN GENERAL.—Except as pro-
7 vided in clauses (iv) and (v), a designated
8 agricultural employer shall offer to provide
9 a nonimmigrant agricultural worker with
10 housing at no cost in accordance with
11 clause (ii) or (iii).

12 “(ii) HOUSING.—An employer may
13 provide housing to a nonimmigrant agricul-
14 tural worker that meets—

15 “(I) applicable Federal standards
16 for temporary labor camps; or

17 “(II) applicable local standards
18 (or, in the absence of applicable local
19 standards, State standards) for rental
20 or public accommodation housing or
21 other substantially similar class of
22 habitation.

23 “(iii) HOUSING PAYMENTS.—

24 “(I) PUBLIC HOUSING.—If the
25 employer arranges public housing for

1 nonimmigrant agricultural workers
2 through a State, county, or local gov-
3 ernment program and such public
4 housing units normally require pay-
5 ments from tenants, such payments
6 shall be made by the employer directly
7 to the landlord.

8 “(II) DEPOSITS.—Deposits for
9 bedding or other similar incidentals
10 related to housing shall not be col-
11 lected from workers by employers who
12 provide housing for such workers.

13 “(III) DAMAGES.—The employer
14 may require any worker who is re-
15 sponsible for damage to housing that
16 did not result from normal wear and
17 tear related to habitation to reimburse
18 the employer for the reasonable cost
19 of repairing such damage.

20 “(iv) HOUSING ALLOWANCE ALTER-
21 NATIVE.—

22 “(I) IN GENERAL.—The employer
23 may provide a reasonable housing al-
24 lowance instead of providing housing
25 under clause (i). Upon the request of

1 a worker seeking assistance in locat-
2 ing housing, the employer shall make
3 a good faith effort to assist the work-
4 er in identifying and locating housing
5 in the area of intended employment.
6 An employer who offers a housing al-
7 lowance to a worker or assists a work-
8 er in locating housing, which the
9 worker occupies shall not be deemed a
10 housing provider under section 203 of
11 the Migrant and Seasonal Agricultural
12 Worker Protection Act (29 U.S.C.
13 1823) solely by virtue of providing
14 such housing allowance. No housing
15 allowance may be used for housing
16 that is owned or controlled by the em-
17 ployer.

18 “(II) CERTIFICATION REQUIRE-
19 MENT.—Contract agricultural workers
20 may only be provided a housing allow-
21 ance if the Governor of the State in
22 which the place of employment is lo-
23 cated certifies to the Secretary that
24 there is adequate housing available in
25 the area of intended employment for

1 migrant farm workers and contract
2 agricultural workers who are seeking
3 temporary housing while employed in
4 agricultural work. Such certification
5 shall expire after 3 years unless re-
6 newed by the Governor of the State.

7 “(III) AMOUNT OF ALLOW-
8 ANCE.—

9 “(aa) NONMETROPOLITAN
10 COUNTIES.—If the place of em-
11 ployment of the workers provided
12 an allowance under this clause is
13 a nonmetropolitan county, the
14 amount of the housing allowance
15 under this clause shall be equal
16 to the average fair market rental
17 for existing housing in nonmetro-
18 politan counties in the State in
19 which the place of employment is
20 located, as established by the
21 Secretary of Housing and Urban
22 Development pursuant to section
23 8(c) of the United States Hous-
24 ing Act of 1937 (42 U.S.C.
25 1437f(c)), based on a 2-bedroom

1 dwelling unit and an assumption
2 of 2 persons per bedroom.

3 “(bb) METROPOLITAN
4 COUNTIES.—If the place of em-
5 ployment of the workers provided
6 an allowance under this clause is
7 a metropolitan county, the
8 amount of the housing allowance
9 under this clause shall be equal
10 to the average fair market rental
11 for existing housing in metropoli-
12 tan counties in the State in
13 which the place of employment is
14 located, as established by the
15 Secretary of Housing and Urban
16 Development pursuant to section
17 8(c) of the United States Hous-
18 ing Act of 1937 (42 U.S.C.
19 1437f(c)), based on a 2-bedroom
20 dwelling unit and an assumption
21 of 2 persons per bedroom.

22 “(v) EXCEPTION FOR COMMUTING
23 WORKERS.—Nothing in this subparagraph
24 may be construed to require an employer
25 to provide housing or a housing allowance

1 to workers who reside outside of the
2 United States if their place of residence is
3 within normal commuting distance and the
4 job site is within 50 miles of an inter-
5 national land border of the United States.

6 “(H) WORKSITE TRANSPORTATION FOR
7 CONTRACT WORKERS.—During the period a
8 designated agricultural employer employs a con-
9 tract worker, such employer shall, at the em-
10 ployer’s option, provide or reimburse the con-
11 tract worker for the cost of daily transportation
12 from the contract worker’s living quarters to
13 the contract worker’s place of employment.

14 “(I) REIMBURSEMENT OF TRANSPOR-
15 TATION TO THE PLACE OF EMPLOYMENT.—

16 “(i) IN GENERAL.—A nonimmigrant
17 agricultural worker shall be reimbursed by
18 the first employer for the cost of the work-
19 er’s transportation and subsistence from
20 the place from which the worker came
21 from to the place of first employment.

22 “(ii) LIMITATION.—The amount of re-
23 imbursement provided under clause (i) to a
24 worker shall not exceed the lesser of—

1 “(I) the actual cost to the worker
2 of the transportation and subsistence
3 involved; or

4 “(II) the most economical and
5 reasonable common carrier transpor-
6 tation charges and subsistence costs
7 for the distance involved.

8 “(J) REIMBURSEMENT OF TRANSPOR-
9 TATION FROM PLACE OF EMPLOYMENT.—

10 “(i) IN GENERAL.—A contract agri-
11 cultural worker who completes at least 27
12 months under his or her contract with the
13 same designated agricultural employer
14 shall be reimbursed by that employer for
15 the cost of the worker’s transportation and
16 subsistence from the place of employment
17 to the place from which the worker came
18 from abroad to work for the employer.

19 “(ii) LIMITATION.—The amount of re-
20 imbursement required under clause (i)
21 shall not exceed the lesser of—

22 “(I) the actual cost to the worker
23 of the transportation and subsistence
24 involved; or

1 “(II) the most economical and
2 reasonable common carrier transpor-
3 tation charges and subsistence costs
4 for the distance involved.

5 “(f) WAGES.—

6 “(1) WAGE RATE REQUIREMENT.—

7 “(A) IN GENERAL.—A nonimmigrant agri-
8 cultural worker employed by a designated agri-
9 cultural employer shall be paid not less than the
10 wage rate for such employment set forth in
11 paragraph (3).

12 “(B) WORKERS PAID ON A PIECE RATE OR
13 OTHER INCENTIVE BASIS.—If an employer pays
14 by the piece rate or other incentive method and
15 requires 1 or more minimum productivity
16 standards as a condition of job retention, such
17 standards shall be specified in the job offer and
18 be no more than those which have been nor-
19 mally required (at the time of the employee’s
20 first application for designated employer status)
21 by other employers for the activity in the geo-
22 graphic area of the job, unless the Secretary
23 approves a higher standard.

24 “(2) JOB CATEGORIES.—

1 “(A) IN GENERAL.—For purposes of para-
2 graph (1), each nonimmigrant agricultural
3 worker employed by such employer shall be as-
4 signed to 1 of the following standard occupa-
5 tional classifications, as defined by the Bureau
6 of Labor Statistics:

7 “(i) First-Line Supervisors of Farm-
8 ing, Fishing, and Forestry Workers (45–
9 1011).

10 “(ii) Animal Breeders (45-2021).

11 “(iii) Graders and Sorters, Agricul-
12 tural Products (45–2041).

13 “(iv) Agricultural equipment operator
14 (45–2091).

15 “(v) Farmworkers and Laborers,
16 Crop, Nursery, and Greenhouse (45–
17 2092).

18 “(vi) Farmworkers, Farm, Ranch and
19 Aquacultural Animals (45-2093).

20 “(B) DETERMINATION OF CLASSIFICA-
21 TION.—A nonimmigrant agricultural worker is
22 employed in a standard occupational classifica-
23 tion described in clause (i), (ii), (iii), (iv), (v),
24 or (vi) of subparagraph (A) if the worker per-
25 forms activities associated with that occupa-

1 tional classification, as specified on the employ-
2 er’s petition, for at least 75 percent of the time
3 in a semiannual employment period.

4 “(3) DETERMINATION OF WAGE RATE.—

5 “(A) CALENDAR YEARS 2014 THROUGH
6 2016.—The wage rate under this subparagraph
7 for calendar years 2014 through 2016 shall be
8 the higher of—

9 “(i) the applicable Federal, State or
10 local minimum wage; or

11 “(ii)(I) for the category described in
12 paragraph (2)(C)—

13 “(aa) \$9.37 for calendar year
14 2014;

15 “(bb) \$9.60 for calendar year
16 2015; and

17 “(cc) \$9.84 for calendar year
18 2016;

19 “(II) for the category described in
20 paragraph (2)(D)—

21 “(aa) \$11.30 for calendar year
22 2014;

23 “(bb) \$11.58 for calendar year
24 2015; and

232

1 “(cc) \$11.87 for calendar year
2 2016;

3 “(III) for the category described in
4 paragraph (2)(E)—

5 “(aa) \$9.17 for calendar year
6 2014;

7 “(bb) \$9.40 for calendar year
8 2015; and

9 “(cc) \$9.64 for calendar year
10 2016; and

11 “(IV) for the category described in
12 paragraph (2)(F)—

13 “(aa) \$10.82 for calendar year
14 2014;

15 “(bb) \$11.09 for calendar year
16 2015; and

17 “(cc) \$11.37 for calendar year
18 2016;

19 “(B) SUBSEQUENT YEARS.—The Secretary
20 shall increase the hourly wage rates set forth in
21 clauses (i) through (iv) of subparagraph (A),
22 for each calendar year after the calendar years
23 described in subparagraph (A) by an amount
24 equal to—

1 “(i) 1.5 percent, if the percentage in-
2 crease in the Employment Cost Index for
3 wages and salaries during the previous cal-
4 endar year, as calculated by the Bureau of
5 Labor Statistics, is less than 1.5 percent;

6 “(ii) the percentage increase in such
7 Employment Cost Index, if such percent-
8 age increase is between 1.5 percent and
9 2.5 percent, inclusive; or

10 “(iii) 2.5 percent, if such percentage
11 increase is greater than 2.5 percent.

12 “(C) AGRICULTURAL SUPERVISORS AND
13 ANIMAL BREEDERS.—Not later than September
14 1, 2015, and annually thereafter, the Secretary,
15 in consultation with the Secretary of Labor,
16 shall establish the required wage for the next
17 calendar year for each of the job categories set
18 out in subparagraphs (A) and (B) of paragraph
19 (2).

20 “(D) SURVEY BY BUREAU OF LABOR STA-
21 TISTICS.—Not later than April 15, 2015, the
22 Bureau of Labor Statistics shall consult with
23 the Secretary to expand the Occupational Em-
24 ployment Statistics Survey to survey agricul-
25 tural producers and contractors and produce

1 improved wage data by State and the job cat-
2 egories set out in subparagraphs (A) through
3 (F) of paragraph (2).

4 “(4) CONSIDERATION.—In determining the
5 wage rate under paragraph (3)(C), the Secretary
6 may consider appropriate factors, including—

7 “(A) whether the employment of additional
8 alien workers at the required wage will ad-
9 versely affect the wages and working conditions
10 of workers in the United States similarly em-
11 ployed;

12 “(B) whether the employment in the
13 United States of an alien admitted under sec-
14 tion 101(a)(15)(H)(ii)(a) or unauthorized aliens
15 in the agricultural workforce has depressed
16 wages of United States workers engaged in ag-
17 ricultural employment below the levels that
18 would otherwise have prevailed if such aliens
19 had not been employed in the United States;

20 “(C) whether wages of agricultural workers
21 are sufficient to support such workers and their
22 families at a level above the poverty thresholds
23 determined by the Bureau of Census;

24 “(D) the wages paid workers in the United
25 States who are not employed in agricultural em-

1 ployment but who are employed in comparable
2 employment;

3 “(E) the continued exclusion of employers
4 of nonimmigrant alien workers in agriculture
5 from the payment of taxes under chapter 21 of
6 the Internal Revenue Code of 1986 (26 U.S.C.
7 3101 et seq.) and chapter 23 of such Code (26
8 U.S.C. 3301 et seq.);

9 “(F) the impact of farm labor costs in the
10 United States on the movement of agricultural
11 production to foreign countries;

12 “(G) a comparison of the expenses and
13 cost structure of foreign agricultural producers
14 to the expenses incurred by agricultural pro-
15 ducers based in the United States; and

16 “(H) the accuracy and reliability of the
17 Occupational Employment Statistics Survey.

18 “(5) ADVERSE EFFECT WAGE RATE.—

19 “(A) PROHIBITION OF MODIFICATION.—

20 The adverse effect wage rates in effect on April
21 15, 2013, for nonimmigrants admitted under
22 101(a)(15)(H)(ii)(a)—

23 “(i) shall remain in effect until the
24 date described in section 2233 of the Agri-
25 cultural Worker Program Act of 2013; and

1 “(ii) may not be modified except as
2 provided in subparagraph (B).

3 “(B) EXCEPTION.—Until the Secretary es-
4 tablishes the wage rates required under para-
5 graph (3)(C), the adverse effect wage rates in
6 effect on the date of the enactment of the Agri-
7 cultural Worker Program Act of 2013 shall
8 be—

9 “(i) deemed to be such wage rates;
10 and

11 “(ii) after September 1, 2015, ad-
12 justed annually in accordance with para-
13 graph (3)(B).

14 “(C) NONPAYMENT OF FICA AND FUTA
15 TAXES.—An employer employing nonimmigrant
16 agricultural workers shall not be required to
17 pay and withhold from such workers—

18 “(i) the tax required under section
19 3101 of the Internal Revenue Code of
20 1986; or

21 “(ii) the tax required under section
22 3301 of the Internal Revenue Code of
23 1986.

24 “(6) PREFERENTIAL TREATMENT OF ALIENS
25 PROHIBITED.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), employers seeking to hire
3 United States workers shall offer the United
4 States workers not less than the same benefits,
5 wages, and working conditions that the em-
6 ployer is offering, intends to offer, or will pro-
7 vide to nonimmigrant agricultural workers. No
8 job offer may impose on United States workers
9 any restrictions or obligations that will not be
10 imposed on the employer’s nonimmigrant agri-
11 cultural workers.

12 “(B) EXCEPTION.—Notwithstanding sub-
13 paragraph (A), a designated agricultural em-
14 ployer is not required to provide housing or a
15 housing allowance to United States workers.

16 “(g) WORKER PROTECTIONS AND DISPUTE RESOLU-
17 TION.—

18 “(1) EQUALITY OF TREATMENT.—Non-
19 immigrant agricultural workers shall not be denied
20 any right or remedy under any Federal, State, or
21 local labor or employment law applicable to United
22 States workers engaged in agricultural employment.

23 “(2) APPLICABILITY OF THE MIGRANT AND
24 SEASONAL AGRICULTURAL WORKER PROTECTION
25 ACT.—

1 “(A) MIGRANT AND SEASONAL AGRICUL-
2 TURAL WORKER PROTECTION ACT.—Non-
3 immigrant agricultural workers shall be consid-
4 ered migrant agricultural workers for purposes
5 of the Migrant and Seasonal Agricultural Work-
6 er Protection Act (29 U.S.C. 1801 et seq.).

7 “(B) ELIGIBILITY OF NONIMMIGRANT AG-
8 RICULTURAL WORKERS FOR CERTAIN LEGAL
9 ASSISTANCE.—A nonimmigrant agricultural
10 worker shall be considered to be lawfully admit-
11 ted for permanent residence for purposes of es-
12 tablishing eligibility for legal services under the
13 Legal Services Corporation Act (42 U.S.C.
14 2996 et seq.) on matters relating to wages,
15 housing, transportation, and other employment
16 rights.

17 “(C) MEDIATION.—

18 “(i) FREE MEDIATION SERVICES.—
19 The Federal Mediation and Conciliation
20 Service shall be available to assist in re-
21 solving disputes arising under this section
22 between nonimmigrant agricultural work-
23 ers and designated agricultural employers
24 without charge to the parties.

1 “(ii) COMPLAINT.—If a nonimmigrant
2 agricultural worker files a complaint under
3 section 504 of the Migrant and Seasonal
4 Agricultural Worker Protection Act (29
5 U.S.C. 1854), not later than 60 days after
6 the filing of proof of service of the com-
7 plaint, a party to the action may file a re-
8 quest with the Federal Mediation and Con-
9 ciliation Service to assist the parties in
10 reaching a satisfactory resolution of all
11 issues involving all parties to the dispute.

12 “(iii) NOTICE.—Upon filing a request
13 under clause (ii) and giving of notice to the
14 parties, the parties shall attempt mediation
15 within the period specified in clause (iv).

16 “(iv) 90-DAY LIMIT.—The Federal
17 Mediation and Conciliation Service may
18 conduct mediation or other nonbinding dis-
19 pute resolution activities for a period not
20 to exceed 90 days beginning on the date on
21 which the Federal Mediation and Concilia-
22 tion Service receives a request for assist-
23 ance under clause (ii) unless the parties
24 agree to an extension of such period.

1 “(v) AUTHORIZATION OF APPROPRIA-
2 TIONS.—

3 “(I) IN GENERAL.—Subject to
4 clause (II), there are authorized to be
5 appropriated to the Federal Mediation
6 and Conciliation Service \$500,000 for
7 each fiscal year to carry out this sub-
8 paragraph.

9 “(II) MEDIATION.—Notwith-
10 standing any other provision of law,
11 the Director of the Federal Mediation
12 and Conciliation Service is author-
13 ized—

14 “(aa) to conduct the medi-
15 ation or other dispute resolution
16 activities from any other account
17 containing amounts available to
18 the Director; and

19 “(bb) to reimburse such ac-
20 count with amounts appropriated
21 pursuant to subclause (I).

22 “(vi) PRIVATE MEDIATION.—If all
23 parties agree, a private mediator may be
24 employed as an alternative to the Federal
25 Mediation and Conciliation Service.

1 “(3) OTHER RIGHTS.—Nonimmigrant agricul-
2 tural workers shall be entitled to the rights granted
3 to other classes of aliens under sections 242(h) and
4 245E.

5 “(4) WAIVER OF RIGHTS.—Agreements by non-
6 immigrant agricultural workers to waive or modify
7 any rights or protections under this section shall be
8 considered void or contrary to public policy except as
9 provided in a collective bargaining agreement with a
10 bona fide labor organization.

11 “(h) ENFORCEMENT AUTHORITY.—

12 “(1) INVESTIGATION OF COMPLAINTS.—

13 “(A) AGGRIEVED PERSON OR THIRD-PARTY
14 COMPLAINTS.—

15 “(i) PROCESS.—The Secretary of
16 Labor shall establish a process for the re-
17 ceipt, investigation, and disposition of com-
18 plaints respecting a designated agricultural
19 employer’s failure to meet a condition spec-
20 ified in subsection (e), or an employer’s
21 misrepresentation of material facts in a pe-
22 tition under subsection (e)(2).

23 “(ii) FILING.—Any aggrieved person
24 or organization, including bargaining rep-
25 resentatives, may file a complaint referred

1 to in clause (i) not later than 1 year after
2 the date of the failure or misrepresenta-
3 tion, respectively.

4 “(iii) INVESTIGATION OR HEARING.—
5 The Secretary of Labor shall conduct an
6 investigation if there is reasonable cause to
7 believe that such failure or misrepresenta-
8 tion has occurred.

9 “(B) DETERMINATION ON COMPLAINT.—
10 Under such process, the Secretary of Labor
11 shall provide, not later than 30 days after the
12 date on which such a complaint is filed, for a
13 determination as to whether or not a reasonable
14 basis exists to make a finding described in sub-
15 paragraph (C), (D), (E), or (F). If the Sec-
16 retary of Labor determines that such a reason-
17 able basis exists, the Secretary of Labor shall
18 provide for notice of such determination to the
19 interested parties and an opportunity for a
20 hearing on the complaint, in accordance with
21 section 556 of title 5, United States Code, with-
22 in 60 days after the date of the determination.
23 If such a hearing is requested, the Secretary of
24 Labor shall make a finding concerning the mat-
25 ter not later than 60 days after the date of the

1 hearing. In the case of similar complaints re-
2 specting the same applicant, the Secretary of
3 Labor may consolidate the hearings under this
4 subparagraph on such complaints.

5 “(C) FAILURE TO MEET CONDITIONS.—If
6 the Secretary of Labor finds, after notice and
7 opportunity for a hearing, a failure to meet a
8 condition under subsection (e) or (f), or made
9 a material misrepresentation of fact in a peti-
10 tion under subsection (e)(2)—

11 “(i) the Secretary of Labor shall no-
12 tify the Secretary of such finding and may,
13 in addition, impose such other administra-
14 tive remedies (including civil money pen-
15 alties in an amount not to exceed \$1,000
16 per violation) as the Secretary of Labor
17 determines to be appropriate; and

18 “(ii) the Secretary may disqualify the
19 designated agricultural employer from the
20 employment of nonimmigrant agricultural
21 workers for a period of 1 year.

22 “(D) WILLFUL FAILURES AND WILLFUL
23 MISREPRESENTATIONS.—If the Secretary of
24 Labor finds, after notice and opportunity for
25 hearing, a willful failure to meet a condition

1 under subsection (e) or (f) or a willful misrepre-
2 sentation of a material fact in an registration
3 or petition under paragraph (1) or (2) of sub-
4 section (e)—

5 “(i) the Secretary of Labor shall no-
6 tify the Secretary of such finding and may,
7 in addition, impose such other administra-
8 tive remedies (including civil money pen-
9 alties in an amount not to exceed \$5,000
10 per violation) as the Secretary of Labor
11 determines to be appropriate;

12 “(ii) the Secretary of Labor may seek
13 appropriate legal or equitable relief; and

14 “(iii) the Secretary may disqualify the
15 designated agricultural employer from the
16 employment of nonimmigrant agricultural
17 workers for a period of 2 years.

18 “(E) DISPLACEMENT OF UNITED STATES
19 WORKERS.—If the Secretary of Labor finds,
20 after notice and opportunity for hearing, a will-
21 ful failure to meet a condition under subsection
22 (e) or (f) or a willful misrepresentation of a ma-
23 terial fact in an registration or petition under
24 paragraph (1) or (2) of subsection (e), in the
25 course of which failure or misrepresentation the

1 employer displaced a United States worker em-
2 ployed by the employer during the period of em-
3 ployment on the employer's petition under sub-
4 section (e)(2) or during the period of 30 days
5 preceding such period of employment—

6 “(i) the Secretary of Labor shall no-
7 tify the Secretary of such finding and may,
8 in addition, impose such other administra-
9 tive remedies (including civil money pen-
10 alties in an amount not to exceed \$15,000
11 per violation) as the Secretary of Labor
12 determines to be appropriate; and

13 “(ii) the Secretary may disqualify the
14 employer from the employment of non-
15 immigrant agricultural workers for a pe-
16 riod of 3 years.

17 “(F) FAILURES TO PAY WAGES OR RE-
18 QUIRED BENEFITS.—If the Secretary of Labor
19 finds, after notice and opportunity for a hear-
20 ing, that the employer has failed to pay the
21 wages, or provide the housing allowance, trans-
22 portation, subsistence reimbursement, or guar-
23 antee of employment required under subsection
24 (e)(4) and (f), the Secretary of Labor shall as-
25 sess payment of back wages, or other required

1 benefits, due any United States worker or non-
2 immigrant agricultural worker employed by the
3 employer in the specific employment in ques-
4 tion. The back wages or other required benefits
5 required under subsection (e) and (f) shall be
6 equal to the difference between the amount that
7 should have been paid and the amount that ac-
8 tually was paid to such worker.

9 “(G) DISPOSITION OF PENALTIES.—Civil
10 penalties collected under this paragraph shall be
11 deposited into the Comprehensive Immigration
12 Reform Trust Fund established under section
13 6(a)(1) of the Border Security, Economic Op-
14 portunity, and Immigration Modernization Act.

15 “(2) LIMITATIONS ON CIVIL MONEY PEN-
16 ALTIES.—The Secretary of Labor shall not impose
17 total civil money penalties with respect to a petition
18 under subsection (e)(2) in excess of \$90,000.

19 “(3) ELECTION.—A nonimmigrant agricultural
20 worker who has filed an administrative complaint
21 with the Secretary of Labor may not maintain a civil
22 action unless a complaint based on the same viola-
23 tion filed with the Secretary of Labor under para-
24 graph (1) is withdrawn before the filing of such ac-

1 tion, in which case the rights and remedies available
2 under this subsection shall be exclusive.

3 “(4) PRECLUSIVE EFFECT.—Any settlement by
4 a nonimmigrant agricultural worker, a designated
5 agricultural employer, or any person reached
6 through the mediation process required under sub-
7 section (g)(2)(C) shall preclude any right of action
8 arising out of the same facts between the parties in
9 any Federal or State court or administrative pro-
10 ceeding, unless specifically provided otherwise in the
11 settlement agreement.

12 “(5) SETTLEMENTS.—Any settlement by the
13 Secretary of Labor with a designated agricultural
14 worker on behalf of a nonimmigrant agricultural
15 worker of a complaint filed with the Secretary of
16 Labor under this section or any finding by the Sec-
17 retary of Labor under this subsection shall preclude
18 any right of action arising out of the same facts be-
19 tween the parties under any Federal or State court
20 or administrative proceeding, unless specifically pro-
21 vided otherwise in the settlement agreement.

22 “(6) STATUTORY CONSTRUCTION.—Nothing in
23 this subsection may be construed as limiting the au-
24 thority of the Secretary of Labor to conduct any
25 compliance investigation under any other labor law,

1 including any law affecting migrant and seasonal ag-
2 ricultural workers, or, in the absence of a complaint
3 under this section.

4 “(7) DISCRIMINATION PROHIBITED.—It is a
5 violation of this subsection for any person who has
6 filed a petition under subsection (e) or (f) to intimi-
7 date, threaten, restrain, coerce, blacklist, discharge,
8 or in any other manner discriminate against an em-
9 ployee, including a former employee or an applicant
10 for employment, because the employee—

11 “(A) has disclosed information to the em-
12 ployer, or to any other person, that the em-
13 ployee reasonably believes evidences a violation
14 of subsection (e) or (f), or any rule or regula-
15 tion relating to subsection (e) or (f); or

16 “(B) cooperates or seeks to cooperate in an
17 investigation or other proceeding concerning the
18 employer’s compliance with the requirements
19 under subsection (e) or (f) or any rule or regu-
20 lation pertaining to subsection (e) or (f).

21 “(8) ROLE OF ASSOCIATIONS.—

22 “(A) VIOLATION BY A MEMBER OF AN AS-
23 SOCIATION.—

24 “(i) IN GENERAL.—If an association
25 acting as the agent of an employer files an

1 application on behalf of such employer, the
2 employer is fully responsible for such appli-
3 cation, and for complying with the terms
4 and conditions of subsection (e). If such an
5 employer is determined to have violated
6 any requirement described in this sub-
7 section, the penalty for such violation shall
8 apply only to that employer except as pro-
9 vided in clause (ii).

10 “(ii) COLLECTIVE RESPONSIBILITY.—
11 If the Secretary of Labor determines that
12 the association or other members of the as-
13 sociation participated in, had knowledge of,
14 or reason to know of a violation described
15 in clause (i), the penalty shall also be in-
16 voked against the association and complicit
17 association members.

18 “(B) VIOLATIONS BY AN ASSOCIATION
19 ACTING AS AN EMPLOYER.—

20 “(i) IN GENERAL.—If an association
21 filing an application as a sole or joint em-
22 ployer is determined to have violated any
23 requirement described in this section, the
24 penalty for such violation shall apply only

1 to the association except as provided in
2 clause (ii).

3 “(ii) MEMBER RESPONSIBILITY.—If
4 the Secretary of Labor determines that 1
5 or more association members participated
6 in, had knowledge of, or reason to know of
7 the violation described in clause (i), the
8 penalty shall be invoked against all
9 complicit association members.

10 “(i) SPECIAL NONIMMIGRANT VISA PROCESSING AND
11 WAGE DETERMINATION PROCEDURES FOR CERTAIN AG-
12 RICULTURAL OCCUPATIONS.—

13 “(1) FINDING.—Certain industries possess
14 unique occupational characteristics that necessitate
15 the Secretary of Agriculture adopt special proce-
16 dures relating to housing, pay, and visa program ap-
17 plication requirements for those industries.

18 “(2) SPECIAL PROCEDURES INDUSTRY DE-
19 FINED.—In this subsection, the term ‘Special Proce-
20 dures Industry’ means—

21 “(A) shepherding and goat herding;

22 “(B) itinerant commercial beekeeping and
23 pollination;

24 “(C) open range production of livestock;

25 “(D) itinerant animal shearing; and

1 “(E) custom combining industries.

2 “(3) WORK LOCATIONS.—The Secretary shall
3 allow designated agricultural employers in a Special
4 Procedures Industry that do not operate in a single
5 fixed-site location to provide, as part of its registra-
6 tion or petition under the Program, a list of antici-
7 pated work locations, which—

8 “(A) may include an anticipated itinerary;
9 and

10 “(B) may be subsequently amended by the
11 employer, after notice to the Secretary.

12 “(4) WAGE RATES.—The Secretary may estab-
13 lish monthly, weekly, or biweekly wage rates for oc-
14 cupations in a Special Procedures Industry for a
15 State or other geographic area. For an employer in
16 those Special Industries that typically pay a monthly
17 wage, the Secretary shall require that workers will
18 be paid not less frequently than monthly and at a
19 rate no less than the legally required monthly cash
20 wage for such employer as of the date of enactment
21 and in an amount as re-determined annually by the
22 Secretary of Agriculture through rulemaking.

23 “(5) HOUSING.—The Secretary shall allow for
24 the provision of housing or a housing allowance by
25 employers in Special Procedures Industries and

1 allow housing suitable for workers employed in re-
2 mote locations.

3 “(6) ALLERGY LIMITATION.—An employer en-
4 gaged in the commercial beekeeping or pollination
5 services industry may require that an applicant be
6 free from bee pollen, venom, or other bee-related al-
7 lergies.

8 “(7) APPLICATION.—An individual employer in
9 a Special Procedures Industry may file a program
10 petition on its own behalf or in conjunction with an
11 association of employers. The employer’s petition
12 may be part of several related petitions submitted si-
13 multaneously that constitute a master petition.

14 “(8) RULEMAKING.—The Secretary or, as ap-
15 propriate, the Secretary of Homeland Security or
16 the Secretary of Labor, after consultation with em-
17 ployers and employee representatives, shall publish
18 for notice and comment proposed regulations relat-
19 ing to housing, pay and application procedures for
20 Special Procedure Industries.

21 “(j) MISCELLANEOUS PROVISIONS.—

22 “(1) DISQUALIFICATION OF NONIMMIGRANT AG-
23 RICULTURAL WORKERS FROM FINANCIAL ASSIST-
24 ANCE.—An alien admitted as a nonimmigrant agri-
25 cultural worker is not eligible for any program of fi-

1 nancial assistance under Federal law (whether
2 through grant, loan, guarantee, or otherwise) on the
3 basis of financial need, as such programs are identi-
4 fied by the Secretary in consultation with other
5 agencies of the United States.

6 “(2) MONITORING REQUIREMENT.—

7 “(A) IN GENERAL.—The Secretary shall
8 monitor the movement of nonimmigrant agricul-
9 tural workers through—

10 “(i) the Employment Verification Sys-
11 tem described in section 274A(b); and

12 “(ii) the electronic monitoring system
13 established pursuant to subparagraph (B).

14 “(B) ELECTRONIC MONITORING SYSTEM.—

15 Not later than 2 years after the effective date
16 of this section, the Secretary of Homeland Se-
17 curity, through the Director of U.S. Citizenship
18 and Immigration Services, shall establish an
19 electronic monitoring system, which shall—

20 “(i) be modeled on the Student and
21 Exchange Visitor Information System
22 (SEVIS) and the SEVIS II tracking sys-
23 tem administered by U.S. Immigration and
24 Customs Enforcement;

1 “(ii) monitor the presence and em-
2 ployment of nonimmigrant agricultural
3 workers; and

4 “(iii) assist in ensuring the compli-
5 ance of designated agricultural employers
6 and nonimmigrant agricultural workers
7 with the requirements of the Program.”.

8 (b) RULEMAKING.—The Secretary of Agriculture
9 shall issue regulations to carry out section 218A of the
10 Immigration and Nationality Act, as added by subsection
11 (a), not later than 1 year after the date of the enactment
12 of this Act.

13 (c) CLERICAL AMENDMENT.—The table of contents
14 is amended by inserting after the item relation to section
15 219 the following:

“Sec. 218A. Nonimmigrant agricultural worker program.”.

16 (d) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect on October 1, 2014.

18 **SEC. 2233. TRANSITION OF H-2A WORKER PROGRAM.**

19 (a) SUNSET OF PROGRAM.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2), an employer may not petition to employ
22 an alien pursuant to section 101(a)(15)(H)(ii)(a) of
23 the Immigration and Nationality Act (8 U.S.C.
24 1101(a)(15)(H)(ii)(a)) after the date that is 1 year

1 after the date on which the regulations issued pursu-
2 ant to section 2241(b) become effective.

3 (2) EXCEPTION.—An employer may employ an
4 alien described in paragraph (1) for the shorter of—

5 (A) 10 months; or

6 (B) the time specified in the position.

7 (b) CONFORMING AMENDMENTS.—

8 (1) REPEAL OF H-2A NONIMMIGRANT CAT-
9 EGORY.—Section 101(a)(15)(H)(ii) (8 U.S.C.
10 1101(a)(15)(H)(ii)) is amended by striking sub-
11 clause (a).

12 (2) REPEAL OF ADMISSION REQUIREMENTS FOR
13 H-2A WORKER.—Section 218 (8 U.S.C. 1188) is re-
14 pealed.

15 (3) CONFORMING AMENDMENTS.—

16 (A) AMENDMENT OF PETITION REQUIRE-
17 MENTS.—Section 214(c)(1) (8 U.S.C.
18 1184(g)(9)) is amended by striking “For pur-
19 poses of this subsection” and all that follows.

20 (4) EFFECTIVE DATE.—The amendments made
21 by this subsection shall take effect on the date that
22 is 1 year after the effective date of the regulations
23 issued pursuant to section 2241(b).

1 **SEC. 2234. REPORTS TO CONGRESS ON NONIMMIGRANT AG-**
2 **RICULTURAL WORKERS.**

3 (a) ANNUAL REPORT BY SECRETARY OF AGRI-
4 CULTURE.—Not later than September 30 of each year, the
5 Secretary of Agriculture shall submit a report to Congress
6 that identifies, for the previous year, the number,
7 disaggregated by State and by occupation, of—

8 (1) job opportunities approved for employment
9 of aliens admitted pursuant to clause (iii) or clause
10 (iv) of section 101(a)(15)(W) of the Immigration
11 and Nationality Act, as added by section 2232; and
12 (2) aliens actually admitted pursuant to each
13 such clause.

14 (b) ANNUAL REPORT BY SECRETARY OF HOMELAND
15 SECURITY.—Not later than September 30 of each year,
16 the Secretary shall submit a report to Congress that iden-
17 tifies, for the previous year, the number of aliens described
18 in subsection (a)(2) who—

19 (1) violated the terms of the nonimmigrant ag-
20 ricultural worker program established under section
21 218A(b) of the Immigration and Nationality Act, as
22 added by section 2232; and

23 (2) have not departed from the United States.

1 **CHAPTER 3—OTHER PROVISIONS**

2 **SEC. 2241. RULEMAKING.**

3 (a) CONSULTATION REQUIREMENT.—In the course of
4 promulgating any regulation necessary to implement this
5 subtitle, or the amendments made by this subtitle, the Sec-
6 retary, the Secretary of Agriculture, the Secretary of
7 Labor, and the Secretary of State shall regularly consult
8 with each other.

9 (b) DEADLINE FOR ISSUANCE OF REGULATIONS.—
10 Except as provided in section 2232(b), all regulations to
11 implement this subtitle and the amendments made by this
12 subtitle shall be issued not later than 6 months after the
13 date of the enactment of this Act.

14 **SEC. 2242. REPORTS TO CONGRESS.**

15 Not later than 180 days after the date of the enact-
16 ment of this Act, the Secretary and the Secretary of Agri-
17 culture shall jointly submit a report to Congress that de-
18 scribes the measures being taken and the progress made
19 in implementing this subtitle and the amendments made
20 by this subtitle.

21 **SEC. 2243. EFFECTIVE DATE.**

22 This subtitle and the amendments made by this sub-
23 title, except for sections 2221, 2242, and 2243, shall take
24 effect on the date on which the regulations required under
25 section 2241 are issued, regardless of whether such regu-

1 lations are issued on an interim basis or on any other
2 basis.

3 **Subtitle C—Future Immigration**

4 **SEC. 2301. MERIT-BASED POINTS TRACK ONE.**

5 (a) IN GENERAL.—

6 (1) WORLDWIDE LEVEL OF MERIT-BASED IMMI-
7 GRANTS.—Section 201(e) (8 U.S.C. 1151(e)) is
8 amended to read as follows:

9 “(e) WORLDWIDE LEVEL OF MERIT-BASED IMMI-
10 GRANTS.—

11 “(1) IN GENERAL.—

12 “(A) NUMERICAL LIMITATION.—Subject to
13 paragraphs (2), (3), and (4), the worldwide
14 level of merit-based immigrants is equal to
15 120,000 for each fiscal year.

16 “(B) STATUS.—An alien admitted on the
17 basis of a merit-based immigrant visa under
18 this section shall have the status of an alien
19 lawfully admitted for permanent residence.

20 “(2) ANNUAL INCREASE.—

21 “(A) IN GENERAL.—Subject to subpara-
22 graph (B) and paragraph (3), if in any fiscal
23 year the worldwide level of visas available for
24 merit-based immigrants under this section—

1 “(i) is less than 75 percent of the
2 number of applicants for such fiscal year,
3 the worldwide level shall increase by 5 per-
4 cent for the next fiscal year; and

5 “(ii) is equal to or more than 75 per-
6 cent of such number, the worldwide level
7 for the next fiscal year shall be the same
8 as the worldwide level for such fiscal year,
9 minus any amount added to the worldwide
10 level for such fiscal year under paragraph
11 (4).

12 “(B) LIMITATION ON INCREASE.—The
13 worldwide level of visas available for merit-
14 based immigrants shall not exceed 250,000.

15 “(3) EMPLOYMENT CONSIDERATION.—The
16 worldwide level of visas available for merit-based im-
17 migrants may not be increased for a fiscal year
18 under paragraph (2) if the annual average unem-
19 ployment rate for the civilian labor force 18 years or
20 over in the United States, as determined by the Bu-
21 reau of Labor Statistics, for such previous fiscal
22 year is more than 8½ percent.

23 “(4) RECAPTURE OF UNUSED VISAS.—The
24 worldwide level of merit-based immigrants described
25 in paragraph (1) for a fiscal year shall be increased

1 by the difference (if any) between the worldwide
2 level established under paragraph (1) for the pre-
3 vious fiscal year and the number of visas actually
4 issued under this subsection during that fiscal year.
5 Such visas shall be allocated for the following year
6 pursuant to section 203(c)(3).”.

7 (2) MERIT-BASED IMMIGRANTS.—Section 203
8 (8 U.S.C. 1153) is amended by inserting after sub-
9 section (b) the following:

10 “(c) MERIT-BASED IMMIGRANTS.—

11 “(1) FISCAL YEARS 1 THROUGH 4.—For the
12 first 4 fiscal years beginning after the date of enact-
13 ment of the Border Security, Economic Opportunity,
14 and Immigration Modernization Act, the worldwide
15 level of merit-based immigrant visas made available
16 under section 201(e)(1) shall be available for aliens
17 described in section 203(b)(3) and in addition to any
18 visas available for such aliens under such section.

19 “(2) SUBSEQUENT FISCAL YEARS.—Beginning
20 with the fifth fiscal year beginning after the date of
21 the enactment of the Border Security, Economic Op-
22 portunity, and Immigration Modernization Act,
23 aliens subject to the worldwide level specified in sec-
24 tion 201(e) for merit-based immigrants shall be allo-
25 cated as follows:

1 “(A) 50 percent shall be available to appli-
2 cants with the highest number of points allo-
3 cated under tier 1 in paragraph (4).

4 “(B) 50 percent shall be available to appli-
5 cants with the highest number of points allo-
6 cated under tier 2 in paragraph (5).

7 “(3) UNUSED VISAS.—If the total number of
8 visas allocated to tier 1 or tier 2 for a fiscal year
9 are not granted during that fiscal year, such number
10 may be added to the number of visas available sec-
11 tion 201(e)(1) for the following fiscal year and allo-
12 cated as follows:

13 “(A) If the unused visas were allocated for
14 tier 1 in a fiscal year, $\frac{2}{3}$ of such visas shall be
15 available for aliens allocated visas under tier 1
16 in the following fiscal year and $\frac{1}{3}$ of such visas
17 shall be available for aliens allocated visas
18 under either tier 1 or tier 2 in the following fis-
19 cal year.

20 “(B) If the unused visas were allocated for
21 tier 2 in a fiscal year, $\frac{2}{3}$ of such visas shall be
22 available for aliens allocated visas under tier 2
23 in the following fiscal year and $\frac{1}{3}$ of such visas
24 shall be available for aliens allocated visas

1 under either tier 1 or tier 2 in the following fis-
2 cal year.

3 “(4) TIER 1.—The Secretary shall allocate
4 points to each alien seeking to be a tier 1 merit-
5 based immigrant as follows:

6 “(A) EDUCATION.—

7 “(i) IN GENERAL.—An alien may re-
8 ceive points under only 1 of the following
9 categories:

10 “(I) An alien who has received a
11 doctorate degree from an institution
12 of higher education in the United
13 States or the foreign equivalent shall
14 be allocated 15 points.

15 “(II) An alien who has received a
16 master’s degree from an institution of
17 higher education in the United States
18 or the foreign equivalent shall be allo-
19 cated 10 points.

20 “(ii) An alien who has received a
21 bachelor’s degree from an institution of
22 higher education (as defined in section
23 101(a) of the Higher Education Act of
24 1965 (20 U.S.C. 1001(a)) shall be allo-
25 cated 5 points.

1 “(B) EMPLOYMENT EXPERIENCE.—An
2 alien shall be allocated not more than 20 points
3 as follows:

4 “(i) 3 points for each year the alien
5 has been lawfully employed in a zone 5 oc-
6 cupation in the United States.

7 “(ii) 2 points for each year the alien
8 has been lawfully employed in a zone 4 oc-
9 cupation in the United States.

10 “(C) EMPLOYMENT RELATED TO EDU-
11 CATION.—An alien who is in the United States
12 and is employed full-time or has an offer of full-
13 time employment in a field related to the alien’s
14 education—

15 “(i) in a zone 5 occupation shall be al-
16 located 10 points; or

17 “(ii) in a zone 4 occupation shall be
18 allocated 8 points.

19 “(D) ENTREPRENEURSHIP.—An alien who
20 is an entrepreneur in business that employs at
21 least 2 employees in a zone 4 occupation or a
22 zone 5 occupation shall be allocated 10 points.

23 “(E) HIGH DEMAND OCCUPATION.—An
24 alien who is employed full-time in the United
25 States or has an offer of full-time employment

1 in a high demand tier 1 occupation shall be al-
2 located 10 points.

3 “(F) CIVIC INVOLVEMENT.—An alien who
4 has attested that he or she has engaged in a
5 significant amount of community service, as de-
6 termined by the Secretary, shall be allocated 2
7 points.

8 “(G) ENGLISH LANGUAGE.—An alien who
9 received a score of 80 or more on the Test of
10 English as a Foreign Language, or an equiva-
11 lent score on a similar test, as determined by
12 the Secretary, shall be allocated 10 points.

13 “(H) SIBLINGS AND MARRIED SONS AND
14 DAUGHTERS OF CITIZENS.—An alien who is the
15 sibling of a citizen of the United States or who
16 over 31 years of age and is the married son or
17 married daughter of a citizen of the United
18 States shall be allocated 10 points.

19 “(I) AGE.—An alien who is—

20 “(i) between 18 and 24 years of age
21 shall be allocated 8 points;

22 “(ii) between 25 and 32 years of age
23 shall be allocated 6 points; or

24 “(iii) between 33 and 37 years of age
25 shall be allocated 4 points.

1 “(J) COUNTRY OF ORIGIN.—An alien who
2 is a national of a country of which fewer than
3 50,000 nationals were lawfully admitted to per-
4 manent residence in the United States in the
5 previous 5 years shall be allocated 5 points.

6 “(5) TIER 2.—The Secretary shall allocate
7 points to each alien seeking to be a tier 2 merit-
8 based immigrant as follows:

9 “(A) EMPLOYMENT EXPERIENCE.—An
10 alien shall be allocated 2 points for each year
11 the alien has been lawfully employed in the
12 United States, for a total of not more than 20
13 points.

14 “(B) SPECIAL EMPLOYMENT CRITERIA.—
15 An alien who is employed full-time in the
16 United States, or has an offer of full-time em-
17 ployment—

18 “(i) in a high demand tier 2 occupa-
19 tion shall be allocated 10 points; or

20 “(ii) in a zone 1, zone 2, or zone 3 oc-
21 cupation shall be allocated 10 points.

22 “(C) CAREGIVER.—An alien who is or has
23 been a primary caregiver shall be allocated 10
24 points.

1 “(D) EXCEPTIONAL EMPLOYMENT
2 RECORD.—An alien who has a record of excep-
3 tional employment, as determined by the Sec-
4 retary, shall be allocated 10 points. In deter-
5 mining a record of exceptional employment, the
6 Secretary shall consider factors including pro-
7 motions, longevity, changes in occupations from
8 a lower job zone to a higher job zone, partici-
9 pated in safety training, and increases in pay.

10 “(E) CIVIC INVOLVEMENT.—An alien who
11 has demonstrated significant civic involvement
12 shall be allocated 2 points.

13 “(F) ENGLISH LANGUAGE.—

14 “(i) ENGLISH PROFICIENCY.—An
15 alien who has demonstrated English pro-
16 ficiency, as determined by a standardized
17 test designated by the Secretary of Edu-
18 cation, shall be allocated 10 points.

19 “(ii) ENGLISH KNOWLEDGE.—An
20 alien who has demonstrated English knowl-
21 edge, as determined by a standardized test
22 designated by the Secretary of Education,
23 shall be allocated 5 points.

24 “(G) SIBLINGS AND MARRIED SONS AND
25 DAUGHTERS OF CITIZENS.—An alien who is the

1 sibling of a citizen of the United States or is
2 over the age of 31 and is the married son or
3 married daughter of a citizen of the United
4 States shall be allocated 10 points.

5 “(H) AGE.—An alien who is—

6 “(i) between 18 and 24 years of age
7 shall be allocated 8 points;

8 “(ii) between 25 and 32 years of age
9 shall be allocated 6 points; or

10 “(iii) between 33 and 37 years of age
11 shall be allocated 4 points.

12 “(I) COUNTRY OF ORIGIN.—An alien who
13 is a national of a country of which fewer than
14 50,000 nationals were lawfully admitted to per-
15 manent residence in the United States in the
16 previous 5 years shall be allocated 5 points.

17 “(6) FEE.—An alien who is allocated a visa
18 under this section shall pay a fee of \$1,500 in addi-
19 tion to any fee assessed to cover the costs to process
20 an application under this subsection. Fees collected
21 under this paragraph shall be deposited by the Sec-
22 retary into the Comprehensive Immigration Reform
23 Trust Fund established under section 6(a)(1) of the
24 Border Security, Economic Opportunity, and Immi-
25 gration Modernization Act.

1 “(7) ELIGIBILITY OF ALIENS IN REGISTERED
2 PROVISIONAL IMMIGRANT STATUS.—An alien who
3 was granted registered provisional immigrant status
4 under section 245B is not eligible to receive a merit-
5 based immigrant visa under section 201(e).

6 “(8) INELIGIBILITY OF ALIENS WITH PENDING
7 OR APPROVED PETITIONS.—An alien who has a peti-
8 tion pending or approved in another immigrant cat-
9 egory under this section or section 201 may not
10 apply for a merit-based immigrant visa.

11 “(9) DEFINITIONS.—In this subsection:

12 “(A) HIGH DEMAND TIER 1 OCCUPA-
13 TION.—The term ‘high demand tier 1 occupa-
14 tion’ means 1 of the 5 occupations for which
15 the highest number of nonimmigrants described
16 in section 101(a)(15)(H)(i) were sought to be
17 admitted by employers during the previous fis-
18 cal year.

19 “(B) HIGH DEMAND TIER 2 OCCUPA-
20 TION.—The term ‘high demand tier 2 occupa-
21 tion’ means 1 of the 5 occupations for which
22 the highest number of positions were sought to
23 become registered positions by employers under
24 section 220(e) during the previous fiscal year.

1 “(C) SECRETARY.—The term ‘Secretary’
2 means the Secretary of Homeland Security.

3 “(D) ZONE 1 OCCUPATION.—The term
4 ‘zone 1 occupation’ means an occupation that
5 requires little or no preparation and is classified
6 as a zone 1 occupation on—

7 “(i) the Occupational Information
8 Network Database (O*NET) on the date
9 of the enactment of this Act; or

10 “(ii) such Database or a similar suc-
11 cessor database, as designated by the Sec-
12 retary of Labor, after the date of the en-
13 actment of this Act.

14 “(E) ZONE 2 OCCUPATION.—The term
15 ‘zone 2 occupation’ means an occupation that
16 requires some preparation and is classified as a
17 zone 2 occupation on—

18 “(i) the Occupational Information
19 Network Database (O*NET) on the date
20 of the enactment of this Act; or

21 “(ii) such Database or a similar suc-
22 cessor database, as designated by the Sec-
23 retary of Labor, after the date of the en-
24 actment of this Act.

1 “(F) ZONE 3 OCCUPATION.—The term
2 ‘zone 3 occupation’ means an occupation that
3 requires medium preparation and is classified
4 as a zone 3 occupation on—

5 “(i) the Occupational Information
6 Network Database (O*NET) on the date
7 of the enactment of this Act; or

8 “(ii) such Database or a similar suc-
9 cessor database, as designated by the Sec-
10 retary of Labor, after the date of the en-
11 actment of this Act.

12 “(G) ZONE 4 OCCUPATION.—The term
13 ‘zone 4 occupation’ means an occupation that
14 requires considerable preparation and is classi-
15 fied as a zone 4 occupation on—

16 “(i) the Occupational Information
17 Network Database (O*NET) on the date
18 of the enactment of this Act; or

19 “(ii) such Database or a similar suc-
20 cessor database, as designated by the Sec-
21 retary of Labor, after the date of the en-
22 actment of this Act.

23 “(H) ZONE 5 OCCUPATION.—The term
24 ‘zone 5 occupation’ means an occupation that

1 requires extensive preparation and is classified
2 as a zone 5 occupation on—

3 “(i) the Occupational Information
4 Network Database (O*NET) on the date
5 of the enactment of this Act; or

6 “(ii) such Database or a similar suc-
7 cessor database, as designated by the Sec-
8 retary of Labor, after the date of the en-
9 actment of this Act.”.

10 (b) MODIFICATION OF POINTS.—The Secretary may
11 submit to Congress a proposal to modify the number of
12 points allocated under subsection (c) of section 203 of the
13 Immigration and Nationality Act (8 U.S.C. 1153), as
14 amended by subsection (a).

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect on the first day of the first
17 fiscal year beginning after the date of the enactment of
18 this Act.

19 **SEC. 2302. MERIT-BASED TRACK TWO.**

20 (a) IN GENERAL.—In addition to any immigrant visa
21 made available under the Immigration and Nationality Act
22 (8 U.S.C. 1101 et seq.), as amended by this Act, the Sec-
23 retary of State shall allocate merit-based immigrant visas
24 as described in this section.

1 (b) STATUS.—An alien admitted on the basis of a
2 merit-based immigrant visa under this section shall have
3 the status of an alien lawfully admitted for permanent res-
4 idence (as that term is defined in section 101(a)(20) of
5 the Immigration and Nationality Act (8 U.S.C.
6 1101(a)(20)).

7 (c) ELIGIBILITY.—Beginning on October 1, 2014, the
8 following aliens shall be eligible for merit-based immigrant
9 visas under this section:

10 (1) EMPLOYMENT-BASED IMMIGRANTS.—An
11 alien who is the beneficiary of a petition filed before
12 the date of the enactment of this Act to accord sta-
13 tus under section 203(b) of the Immigration and
14 Nationality Act, if the visa has not been issued with-
15 in 5 years after the date on which such petition was
16 filed.

17 (2) FAMILY-SPONSORED IMMIGRANTS.—Subject
18 to subsection (d), an alien who is the beneficiary of
19 a petition filed to accord status under section 203(a)
20 of the Immigration and Nationality Act—

21 (A) prior to the date of the enactment of
22 this Act, if the visa was not issued within 5
23 years after the date on which such petition was
24 filed; or

1 (B) after such date of enactment, to ac-
2 cord status under paragraph (3) or (4) of sec-
3 tion 203(a) of the Immigration and Nationality
4 Act (8 U.S.C. 1153 (a)), as in effect the minute
5 before the effective date specified in section
6 2307(a)(3) of this Act, and the visa was not
7 issued within 5 years after the date on which
8 petition was filed.

9 (3) LONG-TERM ALIEN WORKERS AND OTHER
10 MERIT-BASED IMMIGRANTS.—An alien who—

11 (A) is not admitted pursuant to subpara-
12 graph (W) of section 101(a)(15) of the Immi-
13 gration and Nationality Act (8 U.S.C.
14 1101(a)(15)); and

15 (B) has been lawfully present and author-
16 ized for employment in the United States for
17 not less than 10 years; and

18 (d) ALLOCATION OF EMPLOYMENT-SPONSORED
19 MERIT-BASED IMMIGRANT VISAS.—In each of the fiscal
20 years 2015 through and including 2021, the Secretary of
21 State shall allocate to aliens described in subsection (c)(1)
22 a number of merit-based immigrant visas equal to $\frac{1}{7}$ of
23 the number of aliens described in subsection (c)(1) whose
24 visas had not been issued as of the date of the enactment
25 of this Act.

1 (e) ALLOCATION OF FAMILY-SPONSORED MERIT-
2 BASED IMMIGRANT VISAS.—The visas authorized by sub-
3 section (c)(2) shall be allocated as follows:

4 (1) SPOUSES AND CHILDREN OF PERMANENT
5 RESIDENTS.—Petitions to accord status under sec-
6 tion 203(a)(2)(A) of the Immigration and Nation-
7 ality Act (8 U.S.C. 1153(a)(2)(A)), as in effect the
8 minute before the effective date specified in section
9 2307(a)(3) of this Act, are automatically converted
10 to petitions to accord status to the same bene-
11 ficiaries as immediate relatives under section
12 201(b)(2)(A) of the Immigration and Nationality
13 Act (8 U.S.C. 1151(b)(2)(A)).

14 (2) OTHER FAMILY MEMBERS.—In each of the
15 fiscal years 2015 through and including 2021, the
16 Secretary of State shall allocate to the aliens de-
17 scribed in subsection (c)(2)(A), other than those
18 aliens described in paragraph (1), a number of tran-
19 sitional merit-based immigrant visas equal to $\frac{1}{7}$ of
20 the difference between—

21 (A) the number of aliens described in sub-
22 section (c)(2)(A) whose visas had not been
23 issued as of the date of the enactment of this
24 Act; and

1 (B) the number of aliens described in
2 paragraph (1).

3 (3) ORDER OF ISSUANCE FOR PREVIOUSLY
4 FILED APPLICATIONS.—Subject to paragraphs (1)
5 and (2), the visas authorized by subsection (c)(2)(A)
6 shall be issued in the order in which the petitions to
7 accord status under section 203(a) of the Immigra-
8 tion and Nationality Act were filed (8 U.S.C.
9 1153(a)).

10 (4) SUBSEQUENTLY FILED APPLICATIONS.—In
11 fiscal year 2022, the Secretary of State shall allocate
12 to the aliens described in subsection (c)(2)(B), the
13 number of merit-based immigrant visas equal to $\frac{1}{2}$
14 of the number of aliens described in subsection
15 (c)(2)(B) whose visas had not been issued by Octo-
16 ber 1, 2021. In fiscal year 2023, the Secretary of
17 State shall allocate to the aliens described in sub-
18 section (c)(2)(B), the number of merit-based immi-
19 grant visas equal to the number of aliens described
20 in subsection (c)(2)(B) whose visas had not been
21 issued by October 1, 2022.

22 (5) ORDER OF ISSUANCE FOR SUBSEQUENTLY
23 FILED APPLICATIONS.—Subject to paragraph (4),
24 the visas authorized by subsection (c)(2)(B) shall be
25 issued in the order in which the petitions to accord

1 status under section 203(a) of the Immigration and
2 Nationality Act were filed, as in effect the minute
3 before the effective date specified in section
4 2307(a)(3) of this Act.

5 (f) ELIGIBILITY IN YEARS AFTER 2028.—Beginning
6 in fiscal year 2029, aliens eligible for adjustment of status
7 under paragraph (c)(3) of this section must be lawfully
8 present in an employment authorized status for 20 years
9 prior to filing an application for adjustment of status.

10 **SEC. 2303. REPEAL OF THE DIVERSITY VISA PROGRAM.**

11 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.)
12 is amended—

13 (1) in section 201(a) (8 U.S.C. 1151(a))—

14 (A) in paragraph (1), by adding “and” at
15 the end;

16 (B) in paragraph (2), by striking “; and”
17 at the end and inserting a period; and

18 (C) by striking paragraph (3);

19 (2) in section 203 (8 U.S.C. 1153)—

20 (A) by striking subsection (c);

21 (B) in subsection (e)—

22 (i) by striking paragraph (2); and

23 (ii) by redesignating paragraph (3) as
24 paragraph (2);

1 (C) in subsection (f), by striking “(a), (b),
2 or (c) of this section” and inserting “(a) or
3 (b)”; and

4 (D) in subsection (g), by striking “(a), (b),
5 and (c)” and inserting “(a) and (b)”; and
6 (3) in section 204 (8 U.S.C. 1154)—

7 (A) in subsection (a), as amended by sec-
8 tion 2305(d)(6)(A)(i), by striking paragraph
9 (8); and

10 (B) in subsection (e), by striking “(a), (b),
11 or (c)” and inserting “(a) or (b)”.

12 (b) EFFECTIVE DATE AND APPLICATION.—

13 (1) EFFECTIVE DATE.—The amendments made
14 by this section shall take effect on October 1, 2014.

15 (2) APPLICATION.—An alien who receives a no-
16 tification from the Secretary that the alien was se-
17 lected to receive a diversity immigrant visa under
18 section 203(c) of the Immigration and Nationality
19 Act (8 U.S.C. 1153(c)) for fiscal year 2013 or fiscal
20 year 2014 shall remain eligible to receive such visa
21 under the rules of such section, as in effect on Sep-
22 tember 30, 2014. No alien may be allocated such a
23 diversity immigrant visa for a fiscal year after fiscal
24 year 2015.

1 **SEC. 2304. WORLD-WIDE LEVELS AND RECAPTURE OF UN-**
2 **USED IMMIGRANT VISAS.**

3 (a) EMPLOYMENT-BASED IMMIGRANTS.—Section
4 201(d) (8 U.S.C. 1151(d)) is amended to read as follows:

5 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
6 IMMIGRANTS.—

7 “(1) IN GENERAL.—

8 “(A) WORLDWIDE LEVEL.—For a fiscal
9 year after fiscal year 2015, the worldwide level
10 of employment-based immigrants under this
11 subsection is equal to the sum of—

12 “(i) 140,000; and

13 “(ii) the number computed under
14 paragraph (2).

15 “(B) FISCAL YEAR 2015.—For fiscal year
16 2015, the worldwide level of employment-based
17 immigrants under this subsection is equal to
18 the sum of—

19 “(i) 140,000;

20 “(ii) the number computed under
21 paragraph (2); and

22 “(iii) the number computed under
23 paragraph (3).

24 “(2) PREVIOUS FISCAL YEAR.—The number
25 computed under this paragraph for a fiscal year is
26 the difference, if any, between the maximum number

1 of visas which may be issued under section
2 203(a)(relating to family-sponsored immigrants)
3 during the previous fiscal year and the number of
4 visas issued under that section during that year.

5 “(3) UNUSED VISAS.—The number computed
6 under this paragraph is the difference, if any, be-
7 tween—

8 “(A) the sum of the worldwide levels estab-
9 lished under paragraph (1) for fiscal years
10 1992 through and including 2013; and

11 “(B) the number of visas actually issued
12 under section 203(b) during such fiscal years.”.

13 (b) FAMILY-SPONSORED IMMIGRANTS.—Section
14 201(c) (8 U.S.C. 1151(c)) is amended to read as follows:

15 “(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IM-
16 MIGRANTS.—

17 “(1) IN GENERAL.—

18 “(A) WORLDWIDE LEVEL.—Subject to
19 subparagraph (C), for each fiscal year after fis-
20 cal year 2015, the worldwide level of family-
21 sponsored immigrants under this subsection for
22 a fiscal year is equal to the sum of—

23 “(i) 480,000 minus the number com-
24 puted under paragraph (2); and

1 “(ii) the number computed under
2 paragraph (3).

3 “(B) FISCAL YEAR 2015.—Subject to sub-
4 paragraph (C), for fiscal year 2015, the world-
5 wide level of family-sponsored immigrants
6 under this subsection is equal to the sum of—

7 “(i) 480,000 minus the number com-
8 puted under paragraph (2);

9 “(ii) the number computed under
10 paragraph (3); and

11 “(iii) the number computed under
12 paragraph (4).

13 “(C) LIMITATION.—The number computed
14 under subparagraph (A)(i) or (B)(i) may not be
15 less than 226,000. The number computed under
16 subparagraph (A)(i) or (B)(i) may not be less
17 than 226,000, except that beginning on the
18 date that is 18 months after the date of the en-
19 actment of the Border Security, Economic Op-
20 portunity, and Immigration Modernization Act,
21 the number computed under subparagraph
22 (A)(i) or (B)(i) may not be less than 161,000.

23 “(2) IMMEDIATE RELATIVES.—The number
24 computed under this paragraph for a fiscal year is
25 the number of aliens described in subparagraph (A)

1 or (B) of subsection (b)(2) who were issued immi-
2 grant visas, or who otherwise acquired the status of
3 an alien lawfully admitted to the United States for
4 permanent residence, in the previous fiscal year.

5 “(3) PREVIOUS FISCAL YEAR.—The number
6 computed under this paragraph for a fiscal year is
7 the difference, if any, between the maximum number
8 of visas which may be issued under section 203(b)
9 (relating to employment-based immigrants) during
10 the previous fiscal year and the number of visas
11 issued under that section during that year.

12 “(4) UNUSED VISAS.—The number computed
13 under this paragraph is the difference, if any, be-
14 tween—

15 “(A) the sum of the worldwide levels estab-
16 lished under paragraph (1) for fiscal years
17 1992 through and including 2013; and

18 “(B) the number of visas actually issued
19 under section 203(a) during such fiscal years.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this Act shall take effect on the first day of the first fiscal
22 year beginning after the date of the enactment of this Act.

1 **SEC. 2305. RECLASSIFICATION OF SPOUSES AND MINOR**
2 **CHILDREN OF LAWFUL PERMANENT RESI-**
3 **DENTS AS IMMEDIATE RELATIVES.**

4 (a) IMMEDIATE RELATIVES.—Section 201(b)(2) (8
5 U.S.C. 1151(b)(2)) is amended to read as follows:

6 “(2)(A) Aliens who are immediate relatives.

7 “(B) In this paragraph, the term ‘immediate
8 relative’ means—

9 “(i) a child, spouse, or parent of a citizen
10 of the United States, except that in the case of
11 such a parent such citizen shall be at least 21
12 years of age;

13 “(ii) a child or spouse of an alien lawfully
14 admitted for permanent residence;

15 “(iii) a child or spouse of an alien de-
16 scribed in clause (i), who is accompanying or
17 following to join the alien;

18 “(iv) a child or spouse of an alien de-
19 scribed in clause (ii), who is accompanying or
20 following to join the alien;

21 “(v) an alien admitted under section
22 211(a) on the basis of a prior issuance of a visa
23 to the alien’s accompanying parent who is an
24 immediate relative; and

1 “(vi) an alien born to an alien lawfully ad-
2 mitted for permanent residence during a tem-
3 porary visit abroad.

4 “(C) If an alien who was the spouse or child of
5 a citizen of the United States or of an alien lawfully
6 admitted for permanent residence and was not le-
7 gally separated from the citizen or lawful permanent
8 resident at the time of the citizen’s or lawful perma-
9 nent resident’s death files a petition under section
10 204(a)(1)(B), the alien spouse (and each child of the
11 alien) shall remain, for purposes of this paragraph,
12 an immediate relative during the period beginning
13 on the date of the citizen’s or permanent resident’s
14 death and ending on the date on which the alien
15 spouse remarries.

16 “(D) An alien who has filed a petition under
17 clause (iii) or (iv) of section 204(a)(1)(A) shall re-
18 main, for purposes of this paragraph, an immediate
19 relative if the United States citizen or lawful perma-
20 nent resident spouse or parent loses United States
21 citizenship on account of the abuse.”.

22 (b) ALLOCATION OF IMMIGRANT VISAS.—Section
23 203(a) (8 U.S.C. 1153(a)) is amended—

1 (1) in paragraph (1), by striking “23,400,” and
2 inserting “20 percent of the worldwide level of fam-
3 ily-sponsored immigrants under section 201(c)”;

4 (2) by striking paragraph (2) and inserting the
5 following:

6 “(2) UNMARRIED SONS AND UNMARRIED
7 DAUGHTERS OF PERMANENT RESIDENT ALIENS.—
8 Qualified immigrants who are the unmarried sons or
9 unmarried daughters (but are not the children) of
10 an alien lawfully admitted for permanent residence
11 shall be allocated visas in a number not to exceed 20
12 percent of the worldwide level of family-sponsored
13 immigrants under section 201(c), plus any visas not
14 required for the class specified in paragraph (1).”;

15 (3) in paragraph (3) —

16 (A) by striking “23,400,” and inserting
17 “20 percent of the worldwide level of family-
18 sponsored immigrants under section 201(c)”;
19 and

20 (B) by striking “classes specified in para-
21 graphs (1) and (2).” and inserting “class speci-
22 fied in paragraph (2).”; and

23 (4) in paragraph (4)—

24 (A) by striking “65,000,” and inserting
25 “40 percent of the worldwide level of family-

1 sponsored immigrants under section 201(c)”;
2 and

3 (B) by striking “classes specified in para-
4 graphs (1) through (3).” and inserting “class
5 specified in paragraph (3).”.

6 (c) TERMINATION OF REGISTRATION.—Section
7 203(g) (8 U.S.C. 1153(g)) is amended to read as follows:

8 “(g) LISTS.—

9 “(1) IN GENERAL.—For purposes of carrying
10 out the orderly administration of this title, the Sec-
11 retary of State may make reasonable estimates of
12 the anticipated numbers of immigrant visas to be
13 issued during any quarter of any fiscal year within
14 each of the categories under subsections (a), (b),
15 and (c) and may rely upon such estimates in author-
16 izing the issuance of visas.

17 “(2) TERMINATION OF REGISTRATION.—

18 “(A) INFORMATION DISSEMINATION.—Not
19 later than 180 days after the date of the enact-
20 ment of the Border Security, Economic Oppor-
21 tunity, and Immigration Modernization Act, the
22 Secretary of Homeland Security and the Sec-
23 retary of State shall adopt a plan to broadly
24 disseminate information to the public regarding
25 termination of registration procedures described

1 in subparagraphs (B) and (C), including proce-
2 dures for notifying the Department of Home-
3 land Security and the Department of State of
4 any change of address on the part of a peti-
5 tioner or a beneficiary of an immigrant visa pe-
6 tition.

7 “(B) TERMINATION FOR FAILURE TO AD-
8 JUST.—The Secretary of Homeland Security
9 shall terminate the registration of any alien who
10 has evidenced an intention to acquire lawful
11 permanent residence under section 245 and who
12 fails to apply to adjust status within 1 year fol-
13 lowing notification to the alien of the avail-
14 ability of an immigrant visa.

15 “(C) TERMINATION FOR FAILURE TO
16 APPLY.—The Secretary of State shall terminate
17 the registration of any alien not described in
18 subparagraph (B) who fails to apply for an im-
19 migrant visa within 1 year following notification
20 to the alien of the availability of such visa.

21 “(3) REINSTATEMENT.—The registration of
22 any alien that was terminated under paragraph (2)
23 shall be reinstated if, within 2 years following the
24 date of notification of the availability of such visa,

1 the alien demonstrates that such failure to apply
2 was due to good cause.”.

3 (d) TECHNICAL AND CONFORMING AMENDMENTS.—

4 (1) DEFINITIONS.—Section 101(a)(15)(K)(ii)
5 (8 U.S.C. 1101(a)(15)(K)(ii)) is amended by strik-
6 ing “section 201(b)(2)(A)(i)” and inserting “section
7 201(b)(2) (other than clause (v) or (vi) of subpara-
8 graph (B))”.

9 (2) PER COUNTRY LEVEL.—Section
10 202(a)(1)(A) (8 U.S.C. 1152(a)(1)(A)) is amended
11 by striking “section 201(b)(2)(A)(i)” and inserting
12 “section 201(b)(2) (other than clause (v) or (vi) of
13 subparagraph (B))”.

14 (3) RULES FOR DETERMINING WHETHER CER-
15 TAIN ALIENS ARE IMMEDIATE RELATIVES.—Section
16 201(f) (8 U.S.C. 1151(f)) is amended—

17 (A) in paragraph (1), by striking “para-
18 graphs (2) and (3),” and inserting “paragraph
19 (2),”;

20 (B) by striking paragraph (2);

21 (C) by redesignating paragraphs (3) and
22 (4) as paragraphs (2) and (3), respectively; and

23 (D) in paragraph (3), as redesignated by
24 subparagraph (C), by striking “through (3)”
25 and inserting “and (2)”.

1 (4) NUMERICAL LIMITATION TO ANY SINGLE
2 FOREIGN STATE.—Section 202(a)(4) (8 U.S.C.
3 1152(a)(4)) is amended—

4 (A) by striking subparagraphs (A) and
5 (B);

6 (B) by redesignating subparagraphs (C)
7 and (D) as subparagraphs (A) and (B), respec-
8 tively; and

9 (C) in subparagraph (A), as redesignated
10 by clause (ii), by striking “section
11 203(a)(2)(B)” and inserting “section
12 203(a)(2)”.

13 (5) ALLOCATION OF IMMIGRANT VISAS.—Sec-
14 tion 203(h) (8 U.S.C. 1153(h)) is amended—

15 (A) in paragraph (1)—

16 (i) in the matter preceding subpara-
17 graph (A), by striking “subsections
18 (a)(2)(A) and (d)” and inserting “sub-
19 section (d)”;

20 (ii) in subparagraph (A), by striking
21 “becomes available for such alien (or, in
22 the case of subsection (d), the date on
23 which an immigrant visa number became
24 available for the alien’s parent),” and in-

1 serting “became available for the alien’s
2 parent,”; and

3 (iii) in subparagraph (B), by striking
4 “applicable”;

5 (B) by amending paragraph (2) to read as
6 follows:

7 “(2) PETITIONS DESCRIBED.—The petition de-
8 scribed in this paragraph is a petition filed under
9 section 204 for classification of the alien’s parent
10 under subsection (a), (b), or (c).”; and

11 (C) by amending paragraph (3) to read as
12 follows:

13 “(3) RETENTION OF PRIORITY DATE.—

14 “(A) PETITIONS FILED FOR CHILDREN.—

15 For a petition originally filed to classify a child
16 under subsection (d), if the age of the alien is
17 determined under paragraph (1) to be 21 years
18 of age or older on the date that a visa number
19 becomes available to the alien’s parent who was
20 the principal beneficiary of the petition, then,
21 upon the parent’s admission to lawful perma-
22 nent residence in the United States, the petition
23 shall automatically be converted to a petition
24 filed by the parent for classification of the alien
25 under subsection (a)(2) and the petition shall

1 retain the priority date established by the origi-
2 nal petition.

3 “(B) FAMILY AND EMPLOYMENT-BASED
4 PETITIONS.—The priority date for any family-
5 or employment-based petition shall be the date
6 of filing of the petition with the Secretary of
7 Homeland Security (or the Secretary of State,
8 if applicable), unless the filing of the petition
9 was preceded by the filing of a labor certifi-
10 cation with the Secretary of Labor, in which
11 case that date shall constitute the priority date.
12 The beneficiary of any petition shall retain his
13 or her earliest priority date based on any peti-
14 tion filed on his or her behalf that was approv-
15 able when filed, regardless of the category of
16 subsequent petitions.”.

17 (6) PROCEDURE FOR GRANTING IMMIGRANT
18 STATUS.—

19 (A) PETITIONING PROCEDURE.—Section
20 204 (8 U.S.C. 1154) is amended—

21 (i) by striking subsection (a) and in-
22 serting the following:

23 “(a) PETITIONING PROCEDURE.—

24 “(1) IN GENERAL.—(A) Except as provided in
25 subparagraph (H), any citizen of the United States

1 or alien lawfully admitted for permanent residence
2 claiming that an alien is entitled to classification by
3 reason of a relationship described in subparagraph
4 (A) or (B) of section 203(a)(1) or to an immediate
5 relative status under section 201(b)(2)(A) may file a
6 petition with the Secretary of Homeland Security for
7 such classification.

8 “(B) An alien spouse or alien child described in
9 section 201(b)(2)(C) may file a petition with the
10 Secretary under this paragraph for classification of
11 the alien (and the alien’s children) under such sec-
12 tion.

13 “(C)(i) An alien who is described in clause (ii)
14 may file a petition with the Secretary under this
15 subparagraph for classification of the alien (and any
16 child of the alien) if the alien demonstrates to the
17 Secretary that—

18 “(I) the marriage or the intent to marry
19 the citizen of the United States or lawful per-
20 manent resident was entered into in good faith
21 by the alien; and

22 “(II) during the marriage or relationship
23 intended by the alien to be legally a marriage,
24 the alien or a child of the alien has been bat-
25 tered or has been the subject of extreme cruelty

1 perpetrated by the alien’s spouse or intended
2 spouse.

3 “(ii) For purposes of clause (i), an alien de-
4 scribed in this clause is an alien—

5 “(I)(aa) who is the spouse of a citizen of
6 the United States or lawful permanent resident;

7 “(bb) who believed that he or she had mar-
8 ried a citizen of the United States or lawful
9 permanent resident and with whom a marriage
10 ceremony was actually performed and who oth-
11 erwise meets any applicable requirements under
12 this Act to establish the existence of and bona
13 fides of a marriage, but whose marriage is not
14 legitimate solely because of the bigamy of such
15 citizen of the United States or lawful perma-
16 nent resident; or

17 “(cc) who was a bona fide spouse of a cit-
18 izen of the United States or a lawful permanent
19 resident within the past 2 years and—

20 “(AA) whose spouse died within the
21 past 2 years;

22 “(BB) whose spouse renounced citi-
23 zenship status or renounced or lost status
24 as a lawful permanent resident within the

1 past 2 years related to an incident of do-
2 mestic violence; or

3 “(CC) who demonstrates a connection
4 between the legal termination of the mar-
5 riage within the past 2 years and battering
6 or extreme cruelty by spouse who is a cit-
7 izen of the United States or a lawful per-
8 manent resident spouse;

9 “(II) who is a person of good moral char-
10 acter;

11 “(III) who is eligible to be classified as an
12 immediate relative under section 201(b)(2)(A)
13 or who would have been so classified but for the
14 bigamy of the citizen of the United States that
15 the alien intended to marry; and

16 “(IV) who has resided with the alien’s
17 spouse or intended spouse.

18 “(D) An alien who is the child of a citizen or
19 lawful permanent resident of the United States, or
20 who was a child of a United States citizen or lawful
21 permanent resident parent who within the past 2
22 years lost or renounced citizenship status related to
23 an incident of domestic violence, and who is a person
24 of good moral character, who is eligible to be classi-
25 fied as an immediate relative under section

1 201(b)(2)(A), and who resides, or has resided in the
2 past, with the citizen or lawful permanent resident
3 parent may file a petition with the Secretary of
4 Homeland Security under this paragraph for classi-
5 fication of the alien (and any child of the alien)
6 under such section if the alien demonstrates to the
7 Secretary that the alien has been battered by or has
8 been the subject of extreme cruelty perpetrated by
9 the alien’s citizen or lawful permanent resident par-
10 ent. For purposes of this subparagraph, residence
11 includes any period of visitation.

12 “(E) An alien who—

13 “(i) is the spouse, intended spouse, or child
14 living abroad of a citizen or lawful permanent
15 resident who—

16 “(I) is an employee of the United
17 States Government;

18 “(II) is a member of the uniformed
19 services (as defined in section 101(a) of
20 title 10, United States Code); or

21 “(III) has subjected the alien or the
22 alien’s child to battery or extreme cruelty
23 in the United States; and

24 “(ii) is eligible to file a petition under sub-
25 paragraph (C) or (D),

1 shall file such petition with the Secretary of Home-
2 land Security under the procedures that apply to
3 self-petitioners under subparagraph (C) or (D), as
4 applicable.

5 “(F) For the purposes of any petition filed
6 under subparagraph (C) or (D), the
7 denaturalization, loss or renunciation of citizenship
8 or lawful permanent resident status, death of the
9 abuser, divorce, or changes to the abuser’s citizen-
10 ship or lawful permanent resident status after filing
11 of the petition shall not adversely affect the approval
12 of the petition, and for approved petitions shall not
13 preclude the classification of the eligible self-peti-
14 tioning spouse or child as an immediate relative or
15 affect the alien’s ability to adjust status under sub-
16 sections (a) and (c) of section 245 or obtain status
17 as a lawful permanent resident based on the ap-
18 proved self-petition under such clauses.

19 “(G) An alien may file a petition with the Sec-
20 retary of Homeland Security under this paragraph
21 for classification of the alien under section
22 201(b)(2)(A) if the alien—

23 “(i) is the parent of a citizen of the United
24 States or was a parent of a citizen of the
25 United States who, within the past 2 years, lost

1 or renounced citizenship status related to an in-
2 cident of domestic violence or died;

3 “(ii) is a person of good moral character;

4 “(iii) is eligible to be classified as an im-
5 mediate relative under section 201(b)(2)(A);

6 “(iv) resides, or has resided, with the cit-
7 izen daughter or son; and

8 “(v) demonstrates that the alien has been
9 battered or subject to extreme cruelty by the
10 citizen daughter or son.

11 “(H)(i) Subparagraph (A) shall not apply to a
12 citizen of the United States who has been convicted
13 of a specified offense against a minor, unless the
14 Secretary of Homeland Security, in the Secretary’s
15 sole and unreviewable discretion, determines that the
16 citizen poses no risk to the alien with respect to
17 whom a petition described in subparagraph (A) is
18 filed.

19 “(ii) For purposes of clause (i), the term ‘speci-
20 fied offense against a minor’ has the meaning given
21 such term in section 111 of the Adam Walsh Child
22 Protection and Safety Act of 2006.

23 “(2) DETERMINATION OF GOOD MORAL CHAR-
24 ACTER.—Notwithstanding section 101(f), an act or
25 conviction that is waivable with respect to the peti-

1 tioner for purposes of a determination of the peti-
2 tioner's admissibility under section 212(a) or deport-
3 ability under section 237(a) shall not bar the Sec-
4 retary of Homeland Security from finding the peti-
5 tioner to be of good moral character under subpara-
6 graph (C) or (D) of paragraph (1), if the Secretary
7 finds that the act or conviction was connected to the
8 alien's having been battered or subjected to extreme
9 cruelty.

10 “(3) PREFERENCE STATUS.—(A)(i) Any child
11 who attains 21 years of age who has filed a petition
12 under paragraph (1)(D) that was filed or approved
13 before the date on which the child attained 21 years
14 of age shall be considered (if the child has not been
15 admitted or approved for lawful permanent residence
16 by the date the child attained 21 years of age) a pe-
17 titioner for preference status under paragraph (1),
18 (2), or (3) of section 203(a), whichever paragraph is
19 applicable, with the same priority date assigned to
20 the self-petition filed under paragraph (1)(D). No
21 new petition shall be required to be filed.

22 “(ii) Any individual described in clause (i) is el-
23 igible for deferred action and work authorization.

24 “(iii) Any derivative child who attains 21 years
25 of age who is included in a petition described in sub-

1 paragraph (B) that was filed or approved before the
2 date on which the child attained 21 years of age
3 shall be considered (if the child has not been admit-
4 ted or approved for lawful permanent residence by
5 the date the child attained 21 years of age) a VAWA
6 self-petitioner with the same priority date as that as-
7 signed to the petitioner in any petition described in
8 subparagraph (B). No new petition shall be required
9 to be filed.

10 “(iv) Any individual described in clause (iii) and
11 any derivative child of a petition described in sub-
12 paragraph (B) is eligible for deferred action and
13 work authorization.

14 “(B) The petition referred to in subparagraph
15 (A)(iii) is a petition filed by an alien under subpara-
16 graph (C) or (D) of paragraph (1) in which the child
17 is included as a derivative beneficiary.

18 “(C) Nothing in the amendments made by the
19 Child Status Protection Act shall be construed to
20 limit or deny any right or benefit provided under
21 this paragraph.

22 “(D) Any alien who benefits from this para-
23 graph may adjust status in accordance with sub-
24 sections (a) and (c) of section 245 as an alien hav-

1 ing an approved petition for classification under sub-
2 paragraph (C) or (D) of paragraph (1).

3 “(E) For purposes of this paragraph, an indi-
4 vidual who is not less than 21 years of age, who
5 qualified to file a petition under paragraph (1)(D)
6 as of the minute before the date on which the indi-
7 vidual attained 21 years of age, and who did not file
8 such a petition before such day, shall be treated as
9 having filed a petition under such paragraph as of
10 such day if a petition is filed for the status described
11 in such paragraph before the individual attains 25
12 years of age and the individual shows that the abuse
13 was at least 1 central reason for the filing delay.
14 Subparagraphs (A) through (D) shall apply to an in-
15 dividual described in this subparagraph in the same
16 manner as an individual filing a petition under para-
17 graph (1)(D).

18 “(4) CLASSIFICATION AS ALIEN WITH EX-
19 TRAORDINARY ABILITY.—Any alien desiring to be
20 classified under subparagraph (I), (J), (K), (L), or
21 (M) of section 201(b)(1) or section 203(b)(1)(A), or
22 any person on behalf of such an alien, may file a pe-
23 tition with the Secretary of Homeland Security for
24 such classification.

1 “(5) CLASSIFICATION AS EMPLOYMENT-BASED
2 IMMIGRANT.—Any employer desiring and intending
3 to employ within the United States an alien entitled
4 to classification under paragraph (1)(B), (1)(C), (2),
5 or (3) of section 203(b) may file a petition with the
6 Secretary of Homeland Security for such classifica-
7 tion.

8 “(6) CLASSIFICATION AS SPECIAL IMMI-
9 GRANT.—(A) Any alien (other than a special immi-
10 grant under section 101(a)(27)(D)) desiring to be
11 classified under section 203(b)(4), or any person on
12 behalf of such an alien, may file a petition with the
13 Secretary of Homeland Security for such classifica-
14 tion.

15 “(B) Aliens claiming status as a special immi-
16 grant under section 101(a)(27)(D) may file a peti-
17 tion only with the Secretary of State and only after
18 notification by the Secretary that such status has
19 been recommended and approved pursuant to such
20 section.

21 “(7) CLASSIFICATION AS IMMIGRANT INVES-
22 TOR.—Any alien desiring to be classified under para-
23 graph (5) or (6) of section 203(b) may file a petition
24 with the Secretary of Homeland Security for such
25 classification.

1 “(8) DIVERSITY VISA.—(A) Any alien desiring
2 to be provided an immigrant visa under section
3 203(c) may file a petition at the place and time de-
4 termined by the Secretary of State by regulation.
5 Only 1 such petition may be filed by an alien with
6 respect to any petitioning period established. If more
7 than 1 petition is submitted all such petitions sub-
8 mitted for such period by the alien shall be voided.

9 “(B)(i) The Secretary of State shall designate
10 a period for the filing of petitions with respect to
11 visas which may be issued under section 203(c) for
12 the fiscal year beginning after the end of the period.

13 “(ii) Aliens who qualify, through random selec-
14 tion, for a visa under section 203(c) shall remain eli-
15 gible to receive such visa only through the end of the
16 specific fiscal year for which they were selected.

17 “(iii) The Secretary of State shall prescribe
18 such regulations as may be necessary to carry out
19 this subparagraph.

20 “(C) A petition under this paragraph shall be
21 in such form as the Secretary of State may by regu-
22 lation prescribe and shall contain such information
23 and be supported by such documentary evidence as
24 the Secretary of State may require.

1 “(D) Each petition to compete for consideration
2 for a visa under section 203(c) shall be accompanied
3 by a fee equal to \$30. All amounts collected under
4 this subparagraph shall be deposited into the Treas-
5 ury as miscellaneous receipts.

6 “(9) CONSIDERATION OF CREDIBLE EVI-
7 DENCE.—In acting on petitions filed under subpara-
8 graph (C) or (D) of paragraph (1), or in making de-
9 terminations under paragraphs (2) and (3), the Sec-
10 retary of Homeland Security shall consider any cred-
11 ible evidence relevant to the petition. The determina-
12 tion of what evidence is credible and the weight to
13 be given that evidence shall be within the sole discre-
14 tion of the Secretary.

15 “(10) WORK AUTHORIZATION.—Upon the ap-
16 proval of a petition as a VAWA self-petitioner, the
17 alien—

18 “(A) is eligible for work authorization; and

19 “(B) may be provided an ‘employment au-
20 thorized’ endorsement or appropriate work per-
21 mit incidental to such approval.

22 “(11) LIMITATION.—Notwithstanding para-
23 graph (1) through (10), an individual who was a
24 VAWA petitioner or who had the status of a non-
25 immigrant under subparagraph (T) or (U) of section

1 101(a)(15) may not file a petition for classification
2 under this section or section 214 to classify any per-
3 son who committed the battery or extreme cruelty or
4 trafficking against the individual (or the individual’s
5 child), which established the individual’s (or individ-
6 ual’s child) eligibility as a VAWA petitioner or for
7 such nonimmigrant status.”;

8 (ii) in subsection (c)(1), by striking
9 “or preference status”; and

10 (iii) in subsection (h), by striking “or
11 a petition filed under subsection
12 (a)(1)(B)(ii)”.

13 (B) CONFORMING AMENDMENTS.—The
14 Act (8 U.S.C. 1101 et seq.) is amended—

15 (i) in section 101(a)—

16 (I) in paragraph (15)(K), by
17 striking “204(a)(1)(A)(viii)(I)” each
18 place such term appears and inserting
19 “204(a)(1)(H)(i)”;

20 (II) in paragraph (50), by strik-
21 ing “204(a)(1)(A)(iii)(II)(aa)(BB),
22 204(a)(1)(B)(ii)(II)(aa)(BB),” and in-
23 serting “204(a)(1)(C)(ii)(I)(bb) or”;
24 and

25 (III) in paragraph (51)—

- 1 (aa) in subparagraph (A),
2 by striking “204(a)(1)(A)” and
3 inserting “204(a)(1)”;
- 4 (bb) by striking subpara-
5 graph (B); and
- 6 (cc) by redesignating sub-
7 paragraphs (C), (D), (E), (F),
8 and (G) as subparagraphs (B),
9 (C), (D), (E), and (F), respec-
10 tively;
- 11 (ii) in section 106(a), by striking
12 “204(a)(1)(A)(iii)” and inserting
13 “204(a)(1)(C)”;
- 14 (iii) in section 212(a)(4)(C)(i)—
- 15 (I) in subclause (I), by striking
16 “clause (ii), (iii), or (iv) of section
17 204(a)(1)(A), or” and inserting “sub-
18 paragraph (B), (C), or (D) of section
19 204(a)(1);”;
- 20 (II) by striking subclause (II);
21 and
- 22 (III) by redesignating subclause
23 (III) as subclause (II);

1 (iv) in section 216(c)(4)(D), by strik-
2 ing “204(a)(1)(A)(iii)(II)(aa)(BB)” and
3 inserting “204(a)(1)(C)(ii)(I)(bb)”;

4 (v) in section 240(c)(7)(C)(iv)(I), by
5 striking “clause (iii) or (iv) of section
6 204(a)(1)(A), clause (ii) or (iii) of section
7 204(a)(1)(B),” and inserting “subpara-
8 graph (C) or (D) of section 204(a)(1),”.

9 (7) EXCLUDABLE ALIENS.—Section
10 212(d)(12)(B) (8 U.S.C. 1182(d)(12)(B)) is amend-
11 ed by striking “section 201(b)(2)(A)” and inserting
12 “section 201(b)(2) (other than subparagraph
13 (B)(vi))”.

14 (8) ADMISSION OF NONIMMIGRANTS.—Section
15 214(r)(3)(A) (8 U.S.C. 1184(r)(3)(A)) is amended
16 by striking “section 201(b)(2)(A)(i).” and inserting
17 “section 201(b)(2) (other than clause (v) or (vi) of
18 subparagraph (B)).”.

19 (9) REFUGEE CRISIS IN IRAQ ACT OF 2007.—
20 Section 1243(a)(4) of the Refugee Crisis in Iraq Act
21 of 2007 (8 U.S.C. 1157 note) is amended by strik-
22 ing “section 201(b)(2)(A)(i)” and inserting “section
23 201(b)(2) (other than clause (v) or (vi) of subpara-
24 graph (B))”.

1 (10) PROCESSING OF VISA APPLICATIONS.—

2 Section 233 of the Department of State Authoriza-
3 tion Act, Fiscal Year 2003 (8 U.S.C. 1201 note) is
4 amended by striking “section 201(b)(2)(A)(i)” and
5 inserting “section 201(b)(2) (other than clause (v)
6 or (vi) of subparagraph (B))”.

7 (11) ADJUSTMENT OF STATUS.—Section 245(a)
8 (8 U.S.C. 1255(a)) is amended to read as follows:

9 “(a)(1) The status of an alien who was inspected and
10 admitted or paroled into the United States or the status
11 of any other alien having an approved petition for classi-
12 fication as a VAWA self-petitioner may be adjusted by the
13 Attorney General or the Secretary of Homeland Security,
14 in the Attorney General’s or the Secretary’s discretion and
15 under such regulations as the Attorney General or Sec-
16 retary may prescribe, to that of an alien lawfully admitted
17 for permanent residence (regardless of whether the alien
18 has already been admitted for permanent residence) if—

19 “(A) the alien makes an application for such
20 adjustment;

21 “(B) the alien is eligible to receive an immi-
22 grant visa and is admissible to the United States for
23 permanent residence; and

1 “(C) subject to paragraph (2), an immigrant
2 visa is immediately available to the alien at the time
3 the alien’s application is filed.

4 “(2)(A) An application that is based on a petition ap-
5 proved or approvable under subparagraph (A) or (B) of
6 section 204(a)(1) may be filed without regard to the limi-
7 tation set forth in paragraph (1)(C).

8 “(B) An application for adjustment filed for an alien
9 under this paragraph may not be approved until such time
10 as an immigrant visa becomes available for the alien.”.

11 (e) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect on the date of the enactment
13 of this Act.

14 **SEC. 2306. NUMERICAL LIMITATIONS ON INDIVIDUAL FOR-**
15 **EIGN STATES.**

16 (a) NUMERICAL LIMITATION TO ANY SINGLE FOR-
17 EIGN STATE.—Section 202(a)(2) (8 U.S.C. 1152(a)(2)) is
18 amended—

19 (1) in the paragraph heading, by striking
20 “AND EMPLOYMENT-BASED”;

21 (2) by striking “(3), (4), and (5),” and insert-
22 ing “(3) and (4),”;

23 (3) by striking “subsections (a) and (b) of sec-
24 tion 203” and inserting “section 203(a)”;

25 (4) by striking “7” and inserting “15”; and

1 (5) by striking “such subsections” and inserting
2 “such section”.

3 (b) CONFORMING AMENDMENTS.—Section 202 (8
4 U.S.C. 1152) is amended—

5 (1) in subsection (a)—

6 (A) in paragraph (3), by striking “both
7 subsections (a) and (b) of section 203” and in-
8 serting “section 203(a)”; and

9 (B) by striking paragraph (5); and

10 (2) by amending subsection (e) to read as fol-
11 lows:

12 “(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—

13 If it is determined that the total number of immigrant
14 visas made available under section 203(a) to natives of
15 any single foreign state or dependent area will exceed the
16 numerical limitation specified in subsection (a)(2) in any
17 fiscal year, in determining the allotment of immigrant visa
18 numbers to natives under section 203(a), visa numbers
19 with respect to natives of that state or area shall be allo-
20 cated (to the extent practicable and otherwise consistent
21 with this section and section 203) in a manner so that,
22 except as provided in subsection (a)(4), the proportion of
23 the visa numbers made available under each of paragraphs
24 (1) through (4) of section 203(a) is equal to the ratio of
25 the total number of visas made available under the respec-

1 tive paragraph to the total number of visas made available
2 under section 203(a).”.

3 (c) COUNTRY-SPECIFIC OFFSET.—Section 2 of the
4 Chinese Student Protection Act of 1992 (8 U.S.C. 1255
5 note) is amended—

6 (1) in subsection (a), by striking “subsection
7 (e))” and inserting “subsection (d))”; and

8 (2) by striking subsection (d) and redesignating
9 subsection (e) as subsection (d).

10 (d) EFFECTIVE DATE.—The amendments made by
11 this section shall take effect 1 year after the date of the
12 enactment of this Act.

13 **SEC. 2307. ALLOCATION OF IMMIGRANT VISAS.**

14 (a) PREFERENCE ALLOCATION FOR FAMILY-SPON-
15 SORED IMMIGRANTS.—

16 (1) IN GENERAL.—Section 203(a) (8 U.S.C.
17 1153(a)) is amended to read as follows:

18 “(a) PREFERENCE ALLOCATION FOR FAMILY-SPON-
19 SORED IMMIGRANTS.—Aliens subject to the worldwide
20 level specified in section 201(c) for family-sponsored immi-
21 grants shall be allotted visas as follows:

22 “(1) SONS AND DAUGHTERS OF CITIZENS.—
23 Qualified immigrants who are—

24 “(A) the unmarried sons or unmarried
25 daughters but not the children of citizens of the

1 United States shall be allocated visas in a num-
2 ber not to exceed 35 percent of the worldwide
3 level authorized in section 201(c), plus the sum
4 of—

5 “(i) the number of visas not required
6 for the class specified in paragraph (2) for
7 the current fiscal year; and

8 “(ii) the number of visas not required
9 for the class specified in subparagraph (B);
10 or

11 “(B) the married sons or married daugh-
12 ters of citizens of the United States who are 31
13 years of age or younger at the time of filing a
14 petition under section 204 shall be allocated
15 visas in a number not to exceed 25 percent of
16 the worldwide level authorized in section 201(c),
17 plus the number of any visas not required for
18 the class specified in subparagraph (A) current
19 fiscal year.

20 “(2) SONS AND DAUGHTERS OF PERMANENT
21 RESIDENTS.—Qualified immigrants who are the un-
22 married sons or unmarried daughters of aliens ad-
23 mitted for permanent residence shall be allocated
24 visas in a number not to exceed 40 percent of the
25 worldwide level authorized in section 201(c), plus

1 any visas not required for the class specified in para-
2 graph (1)(A).”.

3 (2) CONFORMING AMENDMENTS.—

4 (A) PROCEDURE FOR GRANTING IMMI-
5 GRANT STATUS.—Section 204(f)(1) (8 U.S.C.
6 1154(f)(1)) is amended by striking “section
7 201(b), 203(a)(1), or 203(a)(3),” and inserting
8 “section 201(b) or subparagraph (A) or (B) of
9 section 203(a)(1)”.

10 (B) AUTOMATIC CONVERSION.—For the
11 purposes of any petition pending or approved
12 based on a relationship described—

13 (i) in subparagraph (A) of section
14 203(a)(1) of the Immigration and Nation-
15 ality Act (8 U.S.C. 1153(a)(1)), as amend-
16 ed by paragraph (1), and notwithstanding
17 the age of the alien, such a petition shall
18 be deemed reclassified as a petition based
19 on a relationship described in subpara-
20 graph (B) of such section 203(a)(1) upon
21 the marriage of such alien; or

22 (ii) in subparagraph (B) of such sec-
23 tion 203(a)(1), such a petition shall be
24 deemed reclassified as a petition based on
25 a relationship described in subparagraph

1 (A) of such section 203(a)(1) upon the
2 legal termination of marriage or death of
3 such alien’s spouse.

4 (3) EFFECTIVE DATE.—The amendments made
5 by this subsection shall take effect on the first day
6 of the first fiscal year that begins at least 18 months
7 following the date of the enactment of this Act.

8 (b) PREFERENCE ALLOCATION FOR EMPLOYMENT-
9 BASED IMMIGRANTS.—

10 (1) IN GENERAL.—Section 201(b)(1) (8 U.S.C.
11 1151(b)(1)), as amended by sections 2103(e) and
12 2212(d), is further amended by adding at the end
13 the following:

14 “(H) Derivative beneficiaries as described
15 in section 203(d) of employment-based immi-
16 grants under section 203(b).

17 “(I) Aliens with extraordinary ability in
18 the sciences, arts, education, business, or ath-
19 letics which has been demonstrated by sus-
20 tained national or international acclaim, if, with
21 respect to any such alien—

22 “(i) the achievements of such alien
23 have been recognized in the field through
24 extensive documentation;

1 cation , or a governmental research
2 organization, to conduct research in
3 the area; or

4 “(III) for employment in a com-
5 parable position to conduct research
6 in the area with a department, divi-
7 sion, or institute of a private em-
8 ployer, if the department, division, or
9 institute employs at least 3 persons
10 full-time in research activities and has
11 achieved documented accomplishments
12 in an academic field.

13 “(K) Aliens who are multinational execu-
14 tives and managers if, with respect to any such
15 alien—

16 “(i) in the 3 years preceding the time
17 of the alien’s application for classification
18 and admission into the United States
19 under this subparagraph, the alien has
20 been employed for at least 1 year by a firm
21 or corporation or other legal entity or an
22 affiliate or subsidiary thereof; and

23 “(ii) the alien seeks to enter the
24 United States in order to continue to
25 render services to the same employer or to

1 a subsidiary or affiliate thereof in a capac-
2 ity that is managerial or executive.

3 “(L) Aliens who have earned a doctorate
4 degree from an institution of higher education
5 in the United States or the foreign equivalent.

6 “(M) Alien physicians who have completed
7 the foreign residency requirements under sec-
8 tion 212(e) or obtained a waiver of these re-
9 quirements or an exemption requested by an in-
10 terested State agency or by an interested Fed-
11 eral agency under section 214(l), including
12 those alien physicians who completed such serv-
13 ice before the date of the enactment of the Bor-
14 der Security, Economic Opportunity, and Immi-
15 gration Modernization Act.

16 “(N) ADVANCED DEGREES IN A STEM
17 FIELD.—

18 “(i) IN GENERAL.—An immigrant
19 who—

20 “(I) has earned a master’s or
21 higher degree in a field of science,
22 technology, engineering, or mathe-
23 matics included in the Department of
24 Education’s Classification of Instruc-
25 tional Programs taxonomy within the

1 summary groups of computer and in-
2 formation sciences and support serv-
3 ices, engineering, mathematics and
4 statistics, biological and biomedical
5 sciences, and physical sciences, from a
6 United States institution of higher
7 education;

8 “(II) has an offer of employment
9 from a United States employer in a
10 field related to such degree; and

11 “(III) earned the qualifying grad-
12 uate degree during the 5-year period
13 immediately before the initial filing
14 date of the petition under which the
15 nonimmigrant is a beneficiary.

16 “(ii) DEFINITIONS.—In this subpara-
17 graph—

18 “(I) the term

19 “(II) the term ‘United States in-
20 stitution of higher education’ means
21 an institution that—

22 “(aa) is described in section
23 101(a) of the Higher Education
24 Act of 1965 (20 U.S.C. 1001(a))
25 or is a proprietary institution of

1 higher education (as defined in
2 section 102(b) of such Act (20
3 U.S.C. 1002(b)));

4 “(bb) was classified by the
5 Carnegie Foundation for the Ad-
6 vancement of Teaching on Janu-
7 ary 1, 2012, as a doctorate-
8 granting university with a very
9 high or high level of research ac-
10 tivity or classified by the Na-
11 tional Science Foundation after
12 the date of enactment of this
13 subparagraph, pursuant to an
14 application by the institution, as
15 having equivalent research activ-
16 ity to those institutions that had
17 been classified by the Carnegie
18 Foundation as being doctorate-
19 granting universities with a very
20 high or high level of research ac-
21 tivity; and

22 “(cc) is accredited by an ac-
23 crediting body that is itself ac-
24 credited either by the Depart-
25 ment of Education or by the

1 Council for Higher Education
2 Accreditation.”.

3 (2) EXCEPTION FROM LABOR CERTIFICATION
4 REQUIREMENT FOR STEM IMMIGRANTS.—Section
5 212(a)(5)(D) (8 U.S.C. 1182(a)(5)(D)) is amended
6 to read as follows:

7 “(D) APPLICATION OF GROUNDS.—

8 “(i) IN GENERAL.—Except as pro-
9 vided in clause (ii), the grounds for inad-
10 missibility of aliens under subparagraphs
11 (A) and (B) shall apply to immigrants
12 seeking admission or adjustment of status
13 under paragraph (2) or (3) of section
14 203(b).

15 “(ii) SPECIAL RULE FOR STEM IMMI-
16 GRANTS.—The grounds for inadmissibility
17 of aliens under subparagraph (A) shall not
18 apply to an immigrant seeking admission
19 or adjustment of status under section
20 203(b)(2)(B).”.

21 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

22 (1) TREATMENT OF DERIVATIVE FAMILY MEM-
23 BERS.—Section 203(d) (8 U.S.C. 1153(d)) is
24 amended to read as follows:

1 “(d) TREATMENT OF FAMILY MEMBERS.—If accom-
2 panying or following to join a spouse or parent issued a
3 visa under subsection (a), (b), or (c), subparagraph (I),
4 (J), (K), (L), or (M) of section 201(b)(1), or section
5 201(b)(2), a spouse or child (as defined in subparagraph
6 (A), (B), (C), (D), or (E) of section 101(b)(1)) shall be
7 entitled to the same immigrant status and the same order
8 of consideration provided in the respective subsection.”.

9 (2) ALIENS WHO ARE PRIORITY WORKERS OR
10 MEMBERS OF THE PROFESSIONS HOLDING AD-
11 VANCED DEGREES.—Section 203(b) (8 U.S.C.
12 1153(b)) is amended—

13 (A) in the matter preceding paragraph (1),
14 by striking “Aliens” and inserting “Other than
15 aliens described in paragraph (1) or (2)(B),
16 aliens”;

17 (B) in paragraph (1), by striking the mat-
18 ter preceding subparagraph (A) and inserting
19 “Aliens described in any of the following sub-
20 paragraphs may be admitted to the United
21 States without respect to the worldwide level
22 specified in section 201(d)”;

23 (C) by amending paragraph (2) to read as
24 follows:

1 “(2) ALIENS WHO ARE MEMBERS OF THE PRO-
2 FESSIONS HOLDING ADVANCED DEGREES OR AD-
3 VANCED DEGREES IN A STEM FIELD.—

4 “(A) PROFESSIONS HOLDING ADVANCED
5 DEGREES.—Visas shall be made available, in a
6 number not to exceed 40 percent of the world-
7 wide level authorized in section 201(d), plus
8 any visas not required for the classes specified
9 in paragraph (5), to qualified immigrants who
10 are members of the professions holding ad-
11 vanced degrees or their equivalent whose serv-
12 ices in the sciences, arts, professions, or busi-
13 ness are sought by an employer in the United
14 States, including alien physicians holding for-
15 eign medical degrees that have been deemed
16 sufficient for acceptance by an accredited
17 United States medical residency or fellowship
18 program.

19 “(B) WAIVER OF JOB OFFER.—

20 “(i) NATIONAL INTEREST WAIVER.—
21 Subject to clause (ii), the Secretary of
22 Homeland Security may, if the Secretary
23 deems it to be in the national interest,
24 waive the requirements of subparagraph
25 (A) that an alien’s services in the sciences,

1 arts, professions, or business be sought by
2 an employer in the United States.

3 “(ii) PHYSICIANS WORKING IN SHORT-
4 AGE AREAS OR VETERANS FACILITIES.—

5 “(I) IN GENERAL.—The Sec-
6 retary shall grant a national interest
7 waiver pursuant to clause (i) on be-
8 half of any alien physician with re-
9 spect to whom a petition for pref-
10 erence classification has been filed
11 under subparagraph (A) if—

12 “(aa) the alien physician
13 agrees to work on a full- time
14 basis practicing primary care,
15 specialty medicine, or a combina-
16 tion thereof, in an area or areas
17 designated by the Secretary of
18 Health and Human Services as
19 having a shortage of health care
20 professionals or at a health care
21 facility under the jurisdiction of
22 the Secretary of Veterans Affairs;
23 or

24 “(bb) the alien physician is
25 pursuing such waiver based upon

1 service at a facility or facilities
2 that serve patients who reside in
3 a geographic area or areas des-
4 ignated by the Secretary of
5 Health and Human Services as
6 having a shortage of health care
7 professionals (without regard to
8 whether such facility or facilities
9 are located within such an area)
10 and a Federal agency or a local,
11 county, regional, or State depart-
12 ment of public health determines
13 that the alien physician's work at
14 such facility was or will be in the
15 public interest.

16 “(II) PROHIBITION.—

17 “(aa) No permanent resi-
18 dent visa may be issued to an
19 alien physician described in sub-
20 clause (I) by the Secretary of
21 State under section 204(b), and
22 the Secretary of Homeland Secu-
23 rity may not adjust the status of
24 such an alien physician from that
25 of a nonimmigrant alien to that

1 of a permanent resident alien
2 under section 245, until such
3 time as the alien has worked full
4 time as a physician for an aggregate
5 of 5 years (not including the
6 time served in the status of an
7 alien described in section
8 101(a)(15)(J)), in an area or
9 areas designated by the Secretary
10 of Health and Human Services
11 as having a shortage of health
12 care professionals or at a health
13 care facility under the jurisdiction
14 of the Secretary of Veterans
15 Affairs; or at a facility or facilities
16 meeting the requirements of
17 subclause (I)(bb).

18 “(bb) The 5-year service re-
19 quirement of item (aa) shall be
20 counted from the date the alien
21 physician begins work in the
22 shortage area in any legal status
23 and not the date an immigrant
24 visa petition is filed or approved.
25 Such service shall be aggregated

1 without regard to when such
2 service began and without regard
3 to whether such service began
4 during or in conjunction with a
5 course of graduate medical edu-
6 cation.

7 “(cc) An alien physician
8 shall not be required to submit
9 an employment contract with a
10 term exceeding the balance of the
11 5-year commitment yet to be
12 served, nor an employment con-
13 tract dated within a minimum
14 time period prior to filing of a
15 visa petition pursuant to this
16 subsection.

17 “(dd) An alien physician
18 shall not be required to file addi-
19 tional immigrant visa petitions
20 upon a change of work location
21 from the location approved in the
22 original national interest immi-
23 grant petition.

24 “(III) STATUTORY CONSTRUC-
25 TION.—Nothing in this subparagraph

1 may be construed to prevent the filing
2 of a petition with the Secretary of
3 Homeland Security for classification
4 under section 204(a), by an alien phy-
5 sician described in subclause (I) prior
6 to the date by which such alien physi-
7 cian has completed the service de-
8 scribed in subclause (II) or in section
9 214(l).”.

10 (3) SKILLED WORKERS, PROFESSIONALS, AND
11 OTHER WORKERS.—

12 (A) IN GENERAL.—Section 203(b)(3)(A)
13 (8 U.S.C. 1153(b)(3)(A)) is amended by strik-
14 ing “in a number not to exceed 28.6 percent of
15 such worldwide level, plus any visas not re-
16 quired for the classes specified in paragraphs
17 (1) and (2),” and inserting “ in a number not
18 to exceed 40 percent of the worldwide level au-
19 thorized in section 201(d), plus any visas not
20 required for the class specified in paragraph
21 (2),”.

22 (B) MEDICAL LICENSE REQUIREMENTS.—
23 Section 214(i)(2)(A) (8 U.S.C. 1184(i)(2)(A))
24 is amended by adding at the end “including in
25 the case of a medical doctor, the licensure re-

1 quired to practice medicine in the United
2 States,”.

3 (C) REPEAL OF LIMITATION ON OTHER
4 WORKERS.—Section 203(b)(3) (8 U.S.C.
5 1153(b)(3)) is amended—

6 (i) by striking subparagraph (B); and

7 (ii) redesignated subparagraph (C) as
8 subparagraph (B).

9 (4) CERTAIN SPECIAL IMMIGRANTS.—Section
10 203(b)(4) (8 U.S.C. 1153(b)(4)) is amended by
11 striking “in a number not to exceed 7.1 percent of
12 such worldwide level,” and inserting “in a number
13 not to exceed 10 percent of the worldwide level au-
14 thorized in section 201(d), plus any visas not re-
15 quired for the class specified in paragraph (3),”.

16 (5) EMPLOYMENT CREATION.—Section
17 203(b)(5)(A) (8 U.S.C. 1153(b)(5)(A)) is amended
18 by striking “in a number not to exceed 7.1 percent
19 of such worldwide level,” and inserting “ in a num-
20 ber not to exceed 10 percent of the worldwide level
21 authorized in section 201(d), plus any visas not re-
22 quired for the class specified in paragraph (4),”.

1 **SEC. 2308. V NONIMMIGRANT VISAS.**

2 (a) NONIMMIGRANT ELIGIBILITY.—Subparagraph
3 (V) of section 101(a)(15) (8 U.S.C. 1101(a)(15)) is
4 amended to read as follows:

5 “(V)(i) subject to section 214(q)(1) and
6 section 212(a)(4), an alien who is the bene-
7 ficiary of an approved petition under section
8 203(a) as—

9 “(I) the unmarried son or unmarried
10 daughter of a citizen of the United States;

11 “(II) the unmarried son or unmarried
12 daughter of an alien lawfully admitted for
13 permanent residence; or

14 “(III) the married son or married
15 daughter of a citizen of the United States
16 and who is 31 years of age or younger; or

17 “(ii) subject to section 214(q)(2), an alien
18 who is—

19 “(I) the sibling of a citizen of the
20 United States; or

21 “(II) the married son or married
22 daughter of a citizen of the United States
23 and who is older than 31 years of age;”.

24 (b) EMPLOYMENT AND PERIOD OF ADMISSION OF
25 NONIMMIGRANTS DESCRIBED IN SECTION

1 101(A)(15)(V).—Section 214(q) (8 U.S.C. 1184(q)) is
2 amended to read as follows:

3 “(q) NONIMMIGRANTS DESCRIBED IN SECTION
4 101(A)(15)(V).—

5 “(1) CERTAIN SONS AND DAUGHTERS.—

6 “(A) EMPLOYMENT AUTHORIZATION.—The
7 Secretary shall—

8 “(i) authorize a nonimmigrant admit-
9 ted pursuant to section 101(a)(15)(V)(i) to
10 engage in employment in the United States
11 during the period of such nonimmigrant’s
12 authorized admission; and

13 “(ii) provide such a nonimmigrant
14 with an ‘employment authorized’ endorse-
15 ment or other appropriate document signi-
16 fying authorization of employment.

17 “(B) TERMINATION OF ADMISSION.—The
18 period of authorized admission for such a non-
19 immigrant shall terminate 30 days after the
20 date on which—

21 “(i) such nonimmigrant’s application
22 for an immigrant visa pursuant to the ap-
23 proval of a petition under subsection (a) or
24 (c) of section 203 is denied; or

1 “(ii) such nonimmigrant’s application
2 for adjustment of status under section 245
3 pursuant to the approval of such a petition
4 is denied.

5 “(2) SIBLINGS AND SONS AND DAUGHTERS OF
6 CITIZENS.—

7 “(A) EMPLOYMENT AUTHORIZATION.—The
8 Secretary may not authorize a nonimmigrant
9 admitted pursuant to section 101(a)(15)(V)(ii)
10 to engage in employment in the United States.

11 “(B) PERIOD OF ADMISSION.—The period
12 of authorized admission as such a non-
13 immigrant may not exceed 60 days per fiscal
14 year.

15 “(C) TREATMENT OF PERIOD OF ADMIS-
16 SION.—An alien admitted under section
17 101(a)(15)(V) may not receive an allocation of
18 points pursuant to section 211 of this Act
19 which is section 201(e) as amended for resi-
20 dence in the United States while admitted as
21 such a nonimmigrant.”.

22 (c) PUBLIC BENEFITS.—A noncitizen who is lawfully
23 present in the United States pursuant to section
24 101(a)(15)(V) of the Immigration and Nationality Act (8
25 U.S.C. 1101(a)(15)(V)) is not eligible for any means-test-

1 ed public benefits (as such term is defined in section 403
2 of the Personal Responsibility and Work Opportunity Rec-
3 onciliation Act of 1996 (8 U.S.C. 1613)). A noncitizen ad-
4 mitted under this section is—

5 (1) not entitled to the premium assistance tax
6 credit authorized under section 36B of the Internal
7 Revenue Code of 1986 for his or her coverage;

8 (2) shall be subject to the rules applicable to in-
9 dividuals not lawfully present that are set forth in
10 subsection (e) of such section;

11 (3) shall be subject to the rules applicable to in-
12 dividuals not lawfully present that are set forth in
13 section 1402(e) of the Patient Protection and Af-
14 fordable Care Act (42 U.S.C. 18071); and

15 (4) shall be subject to the rules applicable to in-
16 dividuals not lawfully present set forth in section
17 5000A(d)(3) of the Internal Revenue Code of 1986.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect on the first day of the first
20 fiscal year beginning after the date of the enactment of
21 this Act.

22 **SEC. 2309. FIANCÉE AND FIANCÉ CHILD STATUS PROTEC-**
23 **TION.**

24 (a) DEFINITION.—Section 101(a)(15)(K) (8 U.S.C.
25 1101(a)(15)(K)(i) is amended—

1 (1) in clause (i), as amended by section
2 2305(d)(6)(B)(i)(I), by inserting “or of an alien law-
3 fully admitted for permanent residence” after
4 “204(a)(1)(H)(i)”;
5

6 (2) in clause (ii), by inserting “or of an alien
7 lawfully admitted for permanent residence” after
8 “204(a)(1)(H)(i)”; and
9

10 (3) in clause (iii), by striking the semicolon and
11 inserting “, provided that a determination of the age
12 of such child is made using the age of the alien on
13 the date on which the fiancé, fiancée, or immigrant
14 visa petition is filed with the Secretary of Homeland
15 Security to classify the alien’s parent as the fiancée
16 or fiancé of a United States citizen or of an alien
17 lawfully admitted for permanent residence (in the
18 case of an alien parent described in clause (i)) or as
19 the spouse of a citizen of the United States or of an
20 alien lawfully admitted to permanent residence
21 under section 201(b)(2)(A) (in the case of an alien
22 parent described in clause (ii));”.

23 (b) ADJUSTMENT OF STATUS AUTHORIZED.—Section
24 214(d) (8 U.S.C. 1184(d)) is amended—

 (1) by redesignating paragraphs (2) and (3) as
 paragraphs (3) and (4), respectively; and

1 (2) in paragraph (1), by striking “In the event”
2 and all that follows through the end; and

3 (3) by inserting after paragraph (1) the fol-
4 lowing:

5 “(2)(A) If an alien does not marry the petitioner
6 under paragraph (1) within 3 months after the alien and
7 the alien’s children are admitted into the United States,
8 the visa previously issued under the provisions of section
9 1101(a)(15)(K)(i) shall automatically expire and such
10 alien and children shall be required to depart from the
11 United States. If such aliens fail to depart from the
12 United States, they shall be placed in proceedings in ac-
13 cordance with sections 240 and 241.

14 “(B) Subject to subparagraphs (C) and (D), if an
15 alien marries the petitioner described in section
16 101(a)(15)(K)(i) within 90 days after the alien is admit-
17 ted into the United States, the Secretary or the Attorney
18 General, subject to the provisions of section 245(d), may
19 adjust the status of the alien, and any children accom-
20 panying or following to join the alien, to that of an alien
21 lawfully admitted for permanent residence on a conditional
22 basis under section 216 if the alien and any such children
23 apply for such adjustment and are not determined to be
24 inadmissible to the United States. If the alien does not
25 apply for such adjustment within 6 months after the mar-

1 riage, the visa issued under the provisions of section
2 1101(a)(15)(K) shall automatically expire.

3 “(C) Paragraphs (5) and (7)(A) of section 212(a)
4 shall not apply to an alien who is eligible to apply for ad-
5 justment of the alien’s status to an alien lawfully admitted
6 for permanent residence under this section.

7 “(D) An alien eligible for a waiver of inadmissibility
8 as otherwise authorized under this Act or the Border Se-
9 curity, Economic Opportunity, and Immigration Mod-
10 ernization Act shall be permitted to apply for adjustment
11 of the alien’s status to that of an alien lawfully admitted
12 for permanent residence under this section.”.

13 (c) AGE DETERMINATION.—Section 245(d) (8 U.S.C.
14 1255(d)) is amended—

15 (1) by striking “The Attorney General” and in-
16 serting “(1) The Secretary of Homeland Security”;

17 (2) in paragraph (1), as redesignated, by strik-
18 ing “Attorney General” and inserting “Secretary”;
19 and

20 (3) by adding at the end the following:

21 “(2) A determination of the age of an alien admitted
22 to the United States under section 101(a)(15)(K)(iii) shall
23 be made, for purposes of adjustment to the status of an
24 alien lawfully admitted for permanent residence on a con-
25 ditional basis under section 216, using the age of the alien

1 on the date on which the fiancé, fiancée, or immigrant visa
2 petition was filed with the Secretary of Homeland Security
3 to classify the alien’s parent as the fiancée or fiancé of
4 a United States citizen or of an alien lawfully admitted
5 to permanent residence (in the case of an alien parent ad-
6 mitted to the United States under section
7 101(a)(15)(K)(i)) or as the spouse of a United States cit-
8 izen or of an alien lawfully admitted to permanent resi-
9 dence under section 201(b)(2)(A) (in the case of an alien
10 parent admitted to the United States under section
11 101(a)(15)(K)(ii)).”.

12 (d) APPLICABILITY.—The amendments made by this
13 section shall apply to all petitions or applications described
14 in such amendments that are pending as of the date of
15 the enactment of the Border Security, Economic Oppor-
16 tunity, and Immigration Modernization Act.

17 (e) TECHNICAL AND CONFORMING AMENDMENTS.—

18 (1) DEFINITIONS.—Section 101(a)(15)(K) (8
19 U.S.C. 1101(a)(15)(K)), as amended by subsection
20 (a), is further amended—

21 (A) in clause (ii), by striking “section
22 201(b)(2)(A)(i)” and inserting “section
23 201(b)(2)”; and

1 (B) in clause (iii), by striking “section
2 201(b)(2)(A)(i)” and inserting “section
3 201(b)(2)”.

4 (2) AGE DETERMINATION.—Paragraph (2) of
5 section 245(d) (8 U.S.C. 1255(d)), as added by sub-
6 section (c), is amended by striking section
7 “201(b)(2)(A)(i)” and inserting “201(b)(2)”.

8 (3) EFFECTIVE DATE.—The amendments made
9 by this subsection shall take effect on the first day
10 of the first fiscal year beginning no earlier than 1
11 year after the date of the enactment of this Act.

12 **SEC. 2310. EQUAL TREATMENT FOR ALL STEPCHILDREN.**

13 Section 101(b)(1)(B) (8 U.S.C. 1101(b)(1)(B)) is
14 amended by striking “eighteen years” and inserting “21
15 years”.

16 **SEC. 2311. MODIFICATION OF ADOPTION AGE REQUIRE-**
17 **MENTS.**

18 Section 101(b)(1) (8 U.S.C. 1101(b)(1)), as amended
19 by section 2310, is further amended—

20 (1) in subparagraph (E)—

21 (A) by striking “(E)(i)” and inserting
22 “(E)”;

23 (B) by striking “under the age of sixteen
24 years” and inserting “younger than 18 years of
25 age, or a child adopted when 18 years of age

1 or older if the adopting parent or parents initi-
2 ated the legal adoption process before the child
3 reached 18 years of age”;

4 (C) by striking “; or” and inserting a
5 semicolon; and

6 (D) by striking clause (ii);

7 (2) in subparagraph (F)—

8 (A) by striking “(F)(i)” and inserting
9 “(F)”;

10 (B) by striking “sixteen” and inserting
11 “18”;

12 (C) by striking “Attorney General” and in-
13 serting “Secretary of Homeland Security”; and

14 (D) by striking clause (ii); and

15 (3) in subparagraph (G), by striking “16” and
16 inserting “18”.

17 **SEC. 2312. RELIEF FOR ORPHANS, WIDOWS, AND WID-**
18 **OWERS.**

19 (a) IN GENERAL.—

20 (1) SPECIAL RULE FOR ORPHANS AND
21 SPOUSES.—In applying clauses (iii) and (iv) of sec-
22 tion 201(b)(2)(B) of the Immigration and Nation-
23 ality Act, as added by section 2305(a) of this Act,
24 to an alien whose citizen or lawful permanent resi-
25 dent relative died before the date of the enactment

1 of this Act, the alien relative may file the classifica-
2 tion petition under section 204(a)(1)(A)(ii) of such
3 Act not later than 2 years after the date of the en-
4 actment of this Act.

5 (2) ELIGIBILITY FOR PAROLE.—If an alien was
6 excluded, deported, removed, or departed voluntarily
7 before the date of the enactment of this Act based
8 solely upon the alien’s lack of classification as an
9 immediate relative (as defined in section
10 201(b)(2)(B)(iv) of the Immigration and Nationality
11 Act, as amended by section 2305(a) of this Act) due
12 to the death of such citizen or resident—

13 (A) such alien shall be eligible for parole
14 into the United States pursuant to the Sec-
15 retary’s discretionary authority under section
16 212(d)(5) of such Act (8 U.S.C. 1182(d)(5));
17 and

18 (B) such alien’s application for adjustment
19 of status shall be considered by the Secretary
20 notwithstanding section 212(a)(9) of such Act
21 (8 U.S.C. 1182(a)(9)).

22 (3) ELIGIBILITY FOR PAROLE.—If an alien de-
23 scribed in section 204(l) of the Immigration and Na-
24 tionality Act (8 U.S.C. 1154(l)), was excluded, de-

1 ported, removed, or departed voluntarily before the
2 date of the enactment of this Act—

3 (A) such alien shall be eligible for parole
4 into the United States pursuant to the Sec-
5 retary’s discretionary authority under section
6 212(d)(5) of such Act (8 U.S.C. 1182(d)(5));
7 and

8 (B) such alien’s application for adjustment
9 of status shall be considered by the Secretary
10 notwithstanding section 212(a)(9) of such Act
11 (8 U.S.C. 1182(a)(9)).

12 (b) PROCESSING OF IMMIGRANT VISAS AND DERIVA-
13 TIVE PETITIONS.—

14 (1) IN GENERAL.—Section 204(b) (8 U.S.C.
15 1154(b)) is amended—

16 (A) by striking “After an investigation”
17 and inserting “(1) After an investigation”; and

18 (B) by adding at the end the following:

19 “(2)(A) Any alien described in subparagraph (B)
20 whose qualifying relative died before the completion of im-
21 migrant visa processing may have an immigrant visa ap-
22 plication adjudicated as if such death had not occurred.
23 An immigrant visa issued before the death of the quali-
24 fying relative shall remain valid after such death.

1 “(B) An alien described in this subparagraph is an
2 alien who—

3 “(i) is an immediate relative (as described in
4 section 201(b)(2)(B));

5 “(ii) is a family-sponsored immigrant (as de-
6 scribed in subsection (a) or (d) of section 203);

7 “(iii) is a derivative beneficiary of an employ-
8 ment-based immigrant under section 203(b) (as de-
9 scribed in section 203(d)); or

10 “(iv) is the spouse or child of a refugee (as de-
11 scribed in section 207(c)(2)) or an asylee (as de-
12 scribed in section 208(b)(3)).”.

13 (2) TRANSITION PERIOD.—

14 (A) IN GENERAL.—Notwithstanding a de-
15 nial or revocation of an application for an immi-
16 grant visa for an alien due to the death of the
17 qualifying relative before the date of the enact-
18 ment of this Act, such application may be re-
19 newed by the alien through a motion to reopen,
20 without fee.

21 (B) INAPPLICABILITY OF BARS TO
22 ENTRY.—Notwithstanding section 212(a)(9) of
23 the Immigration and Nationality Act (8 U.S.C.
24 1182(a)(9)), an alien’s application for an immi-
25 grant visa shall be considered if the alien was

1 excluded, deported, removed, or departed volun-
2 tarily before the date of the enactment of this
3 Act.

4 (c) NATURALIZATION.—Section 319(a) (8 U.S.C.
5 1430(a)) is amended by striking “States,” and inserting
6 “States (or if the spouse is deceased, the spouse was a
7 citizen of the United States),”.

8 (d) WAIVERS OF INADMISSIBILITY.—Section 212 (8
9 U.S.C. 1182) is amended by adding at the end the fol-
10 lowing:

11 “(v) CONTINUED WAIVER ELIGIBILITY FOR WIDOWS,
12 WIDOWERS, AND ORPHANS.—In the case of an alien who
13 would have been statutorily eligible for any waiver of inad-
14 missibility under this Act but for the death of a qualifying
15 relative, the eligibility of such alien shall be preserved as
16 if the death had not occurred and the death of the quali-
17 fying relative shall be the functional equivalent of hardship
18 for purposes of any waiver of inadmissibility which re-
19 quires a showing of hardship.”.

20 (e) SURVIVING RELATIVE CONSIDERATION FOR CER-
21 TAIN PETITIONS AND APPLICATIONS.—Section 204(l)(1)
22 (8 U.S.C. 1154(l)(1)) is amended—

23 (1) by striking “who resided in the United
24 States at the time of the death of the qualifying rel-

1 ative and who continues to reside in the United
2 States”; and

3 (2) by striking “related applications,” and in-
4 serting “related applications (including affidavits of
5 support),”.

6 (f) FAMILY-SPONSORED IMMIGRANTS.—Section
7 212(a)(4)(C)(i) (8 U.S.C. 1182(a)(4)(C)(i)), as amended
8 by section 2305(d)(6)(B)(iii) is further amended by add-
9 ing at the end the following:

10 “(III) the status as a surviving
11 relative under 204(l); or”.

12 **SEC. 2313. DISCRETIONARY AUTHORITY WITH RESPECT TO**
13 **REMOVAL, DEPORTATION, OR INADMIS-**
14 **SIBILITY OF CITIZEN AND RESIDENT IMME-**
15 **Diate FAMILY MEMBERS.**

16 (a) APPLICATIONS FOR RELIEF FROM REMOVAL.—
17 Section 240(c)(4) (8 U.S.C. 1229a(c)(4)) is amended by
18 adding at the end the following:

19 “(D) JUDICIAL DISCRETION.—In the case
20 of an alien subject to removal, deportation, or
21 inadmissibility, the immigration judge may ex-
22 ercise discretion to decline to order the alien re-
23 movable, deportable or inadmissible from the
24 United States and terminate proceedings if the
25 judge determines that such removal, deporta-

tion, or inadmissibility is against the public interest or would result in hardship to the alien's United States citizen or lawful permanent resident parent, spouse, or child, or the judge determines the alien is prima facie eligible for naturalization except that this subparagraph shall not apply to an alien whom the judge determines—

“(i) is inadmissible or deportable under—

“(I) subparagraph (B), (C), (D)(ii), (E), (H), (I), or (J) of section 212(a)(2);

“(II) section 212(a)(3);

“(III) subparagraph (A), (C), or (D) of section 212(a)(10); or

“(IV) paragraph (2)(A)(ii), (2)(A)(v), (2)(F), (4), or (6) of section 237(a); or

“(ii) has—

“(I) engaged in conduct described in paragraph (8) or (9) of section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102); or

1 “(II) a felony conviction de-
2 scribed in section 101(a)(43) that
3 would have been classified as an ag-
4 gravated felony at the time of convic-
5 tion.”.

6 (b) SECRETARY’S DISCRETION.—Section 212 (8
7 U.S.C. 1182), as amended by section 2312(d), is further
8 amended by adding at the end the following:

9 “(w) SECRETARY’S DISCRETION.—In the case of an
10 alien who is inadmissible under this section or deportable
11 under section 237, the Secretary of Homeland Security
12 may exercise discretion to waive a ground of inadmis-
13 sibility or deportability if the Secretary determines that
14 such removal or refusal of admission is against the public
15 interest or would result in hardship to the alien’s United
16 States citizen or permanent resident parent, spouse, or
17 child. This subsection shall not apply to an alien whom
18 the Secretary determines—

19 “(1) is inadmissible or deportable under—

20 “(A) subparagraph (B), (C), (D)(ii), (E),
21 (H), (I), or (J) of subsection (a)(2);

22 “(B) subsection (a)(3);

23 “(C) subparagraph (A), (C), or (D) of sub-
24 section (a)(10);

1 “(D) paragraphs (2)(A)(ii), (2)(A)(v),
2 (2)(F), or (6) of section 237(a); or

3 “(E) section 240(c)(4)(D)(ii)(II); or

4 “(2) has—

5 “(A) engaged in conduct described in para-
6 graph (8) or (9) of section 103 of the Traf-
7 ficking Victims Protection Act of 2000 (22
8 U.S.C. 7102); or

9 “(B) a felony conviction described in sec-
10 tion 101(a)(43) that would have been classified
11 as an aggravated felony at the time of convic-
12 tion.”.

13 (c) REINSTATEMENT OF REMOVAL ORDERS.—Sec-
14 tion 241(a)(5) (8 U.S.C. 1231(a)(5)) is amended by strik-
15 ing the period at the end and inserting “, unless the alien
16 reentered prior to attaining the age of 18 years, or rein-
17 statement of the prior order of removal would not be in
18 the public interest or would result in hardship to the
19 alien’s United States citizen or permanent resident parent,
20 spouse, or child.”.

21 **SEC. 2314. WAIVERS OF INADMISSIBILITY.**

22 (a) ALIENS WHO ENTERED AS CHILDREN.—Section
23 212(a)(9)(B)(iii) (8 U.S.C. 1182(a)(9)(B)(iii)) is amended
24 by adding at the end the following:

1 “(VI) ALIENS WHO ENTERED AS
2 CHILDREN.—Clause (i) shall not apply
3 to an alien who is the beneficiary of
4 an approved petition under
5 101(a)(15)(H) and who has earned a
6 baccalaureate or higher degree from a
7 United States institution of higher
8 education (as defined in section
9 101(a) of the Higher Education Act
10 of 1965 (20 U.S.C. 1001(a)), and had
11 not yet reached the age of 16 years at
12 the time of initial entry to the United
13 States.”.

14 (b) ALIENS UNLAWFULLY PRESENT.—Section
15 212(a)(9)(B)(v) (8 U.S.C. 1181(a)(9)(B)(v) is amended—

16 (1) by striking “spouse or son or daughter” and
17 inserting “spouse, son, daughter, or parent”;

18 (2) by striking “extreme”; and

19 (3) by inserting “, child,” after “lawfully resi-
20 dent spouse”.

21 (c) PREVIOUS IMMIGRATION VIOLATIONS.—Section
22 212(a)(9)(C)(i) (8 U.S.C. 1182(a)(9)(C)(i)) is amended
23 by adding “, other than an alien described in clause (iii)
24 or (iv) of subparagraph (B),” after “Any alien”.

25 (d) FALSE CLAIMS.—

1 (1) INADMISSIBILITY.—

2 (A) IN GENERAL.—Section 212(a)(6)(C)
3 (8 U.S.C. 1182(a)(6)(C)) is amended to read as
4 follows:

5 “(C) MISREPRESENTATION.—

6 “(i) IN GENERAL.—Any alien who, by
7 fraud or willfully misrepresenting a mate-
8 rial fact, seeks to procure (or within the
9 last 3 years has sought to procure or has
10 procured) a visa, other documentation, or
11 admission into the United States or other
12 benefit provided under this Act is inadmis-
13 sible.

14 “(ii) FALSELY CLAIMING CITIZEN-
15 SHIP.—

16 “(I) INADMISSIBILITY.—Subject
17 to subclause (II), any alien who know-
18 ingly misrepresents himself or herself
19 to be a citizen of the United States
20 for any purpose or benefit under this
21 chapter (including section 274A) or
22 any other Federal or State law is in-
23 admissible.

24 “(II) SPECIAL RULE FOR CHIL-
25 DREN.—An alien shall not be inadmis-

1 sible under this clause if the misrepre-
2 sentation described in subclause (I)
3 was made by the alien when the
4 alien—

5 “(aa) was under 18 years of
6 age; or

7 “(bb) otherwise lacked the
8 mental competence to knowingly
9 misrepresent a claim of United
10 States citizenship.

“(iii) WAIVER.—The Attorney General or the Secretary of Homeland Security may, in the discretion of the Attorney General or the Secretary, waive the application of clause (i) or (ii)(I) for an alien, regardless whether the alien is within or outside the United States, if the Attorney General or the Secretary find that a determination of inadmissibility to the United States for such alien would—

21 “(I) result in extreme hardship to
22 the alien or to the alien’s parent,
23 spouse, son, or daughter who is a cit-
24 izen of the United States or an alien

1 lawfully admitted for permanent resi-
2 dence; or

3 “(II) in the case of a VAWA self-
4 petitioner, result in significant hard-
5 ship to the alien or a parent or child
6 of the alien who is a citizen of the
7 United States, an alien lawfully ad-
8 mitted for permanent residence, or a
9 qualified alien (as defined in section
10 431 of the Personal Responsibility
11 and Work Opportunity Reconciliation
12 Act of 1996 (8 U.S.C. 1641(b))).

13 “(iv) LIMITATION ON REVIEW.—No
14 court shall have jurisdiction to review a de-
15 cision or action of the Attorney General or
16 the Secretary regarding a waiver under
17 clause (iii).”.

18 (B) CONFORMING AMENDMENT.—Section
19 212 (8 U.S.C. 1182) is amended by striking
20 subsection (i).

21 (2) DEPORTABILITY.—Section 237(a)(3)(D) (8
22 U.S.C. 1227(a)(3)(D)) is amended to read as fol-
23 lows:

1 “(D) FALSELY CLAIMING CITIZENSHIP.—
2 Any alien described in section 212(a)(6)(C)(ii)
3 is deportable.”.

4 **SEC. 2315. CONTINUOUS PRESENCE.**

5 Section 240A(d)(1) (8 U.S.C. 1229b(d)(1)) is amend-
6 ed to read as follows:

7 “(1) TERMINATION OF CONTINUOUS PERIOD.—
8 For purposes of this section, any period of contin-
9 uous residence or continuous physical presence in
10 the United States shall be deemed to end, except in
11 the case of an alien who applies for cancellation of
12 removal under subsection (b)(2), on the date that a
13 notice to appear is filed with the Executive Office
14 for Immigration Review pursuant to section 240.”.

15 **SEC. 2316. GLOBAL HEALTH CARE COOPERATION.**

16 (a) TEMPORARY ABSENCE OF ALIENS PROVIDING
17 HEALTH CARE IN DEVELOPING COUNTRIES.—

18 (1) IN GENERAL.—Title III (8 U.S.C. 1401 et
19 seq.) is amended by inserting after section 317 the
20 following:

21 **“SEC. 317A. TEMPORARY ABSENCE OF ALIENS PROVIDING**
22 **HEALTH CARE IN DEVELOPING COUNTRIES.**

23 “(a) IN GENERAL.—Notwithstanding any other pro-
24 vision of this Act, the Secretary of Homeland Security
25 shall allow an eligible alien and the spouse or child of such

1 alien to reside in a candidate country during the period
2 that the eligible alien is working as a physician or other
3 health care worker in a candidate country. During such
4 period the eligible alien and such spouse or child shall be
5 considered—

6 “(1) to be physically present and residing in the
7 United States for purposes of naturalization under
8 section 316(a); and

9 “(2) to meet the continuous residency require-
10 ments under section 316(b).

11 “(b) DEFINITIONS.—In this section:

12 “(1) CANDIDATE COUNTRY.—The term ‘can-
13 didate country’ means a country that the Secretary
14 of State determines to be—

15 “(A) eligible for assistance from the Inter-
16 national Development Association, in which the
17 per capita income of the country is equal to or
18 less than the historical ceiling of the Inter-
19 national Development Association for the appli-
20 cable fiscal year, as defined by the International
21 Bank for Reconstruction and Development;

22 “(B) classified as a lower middle income
23 country in the then most recent edition of the
24 World Development Report for Reconstruction
25 and Development published by the International

1 Bank for Reconstruction and Development and
2 having an income greater than the historical
3 ceiling for International Development Associa-
4 tion eligibility for the applicable fiscal year; or

5 “(C) qualified to be a candidate country
6 due to special circumstances, including natural
7 disasters or public health emergencies.

8 “(2) ELIGIBLE ALIEN.—The term ‘eligible
9 alien’ means an alien who—

10 “(A) has been lawfully admitted to the
11 United States for permanent residence; and

12 “(B) is a physician or other healthcare
13 worker.

14 “(c) CONSULTATION.—The Secretary of Homeland
15 Security shall consult with the Secretary of State in car-
16 rying out this section.

17 “(d) PUBLICATION.—The Secretary of State shall
18 publish—

19 “(1) not later than 180 days after the date of
20 the enactment of the Border Security, Economic Op-
21 portunity, and Immigration Modernization Act, a list
22 of candidate countries;

23 “(2) an updated version of the list required by
24 paragraph (1) not less often than once each year;
25 and

1 “(3) an amendment to the list required by
2 paragraph (1) at the time any country qualifies as
3 a candidate country due to special circumstances
4 under subsection (b)(1)(C).”.

5 (2) RULEMAKING.—

6 (A) REQUIREMENT.—Not later than 180
7 days after the date of the enactment of this
8 Act, the Secretary shall promulgate regulations
9 to carry out the amendments made by this sub-
10 section.

11 (B) CONTENT.—The regulations promul-
12 gated pursuant to subparagraph (A) shall—

13 (i) permit an eligible alien (as defined
14 in section 317A of the Immigration and
15 Nationality Act, as added by subsection
16 (a)) and the spouse or child of the eligible
17 alien to reside in a foreign country to work
18 as a physician or other healthcare worker
19 as described in subsection (a) of such sec-
20 tion 317A for not less than a 12-month pe-
21 riod and not more than a 24-month period,
22 and shall permit the Secretary to extend
23 such period for an additional period not to
24 exceed 12 months, if the Secretary deter-
25 mines that such country has a continuing

1 need for such a physician or other
2 healthcare worker;

3 (ii) provide for the issuance of docu-
4 ments by the Secretary to such eligible
5 alien, and such spouse or child, if appro-
6 priate, to demonstrate that such eligible
7 alien, and such spouse or child, if appro-
8 priate, is authorized to reside in such
9 country under such section 317A; and

10 (iii) provide for an expedited process
11 through which the Secretary shall review
12 applications for such an eligible alien to re-
13 side in a foreign country pursuant to sub-
14 section (a) of such section 317A if the Sec-
15 retary of State determines a country is a
16 candidate country pursuant to subsection
17 (b)(1)(C) of such section 317A.

18 (3) TECHNICAL AND CONFORMING AMEND-
19 MENTS.—

20 (A) DEFINITION.—Section
21 101(a)(13)(C)(ii) (8 U.S.C. 1101(a)(13)(C)(ii))
22 is amended by adding “except in the case of an
23 eligible alien, or the spouse or child of such
24 alien, who is authorized to be absent from the
25 United States under section 317A,” at the end.

1 (B) DOCUMENTARY REQUIREMENTS.—Sec-
2 tion 211(b) (8 U.S.C. 1181(b)) is amended by
3 inserting “, including an eligible alien author-
4 ized to reside in a foreign country under section
5 317A and the spouse or child of such eligible
6 alien, if appropriate,” after “101(a)(27)(A),”.

7 (C) INELIGIBLE ALIENS.—Section
8 212(a)(7)(A)(i)(I) (8 U.S.C.
9 1182(a)(7)(A)(i)(I)) is amended by inserting
10 “other than an eligible alien authorized to re-
11 side in a foreign country under section 317A
12 and the spouse or child of such eligible alien, if
13 appropriate,” after “Act,”.

14 (4) CLERICAL AMENDMENT.—The table of con-
15 tents of such Act is amended by inserting after the
16 item relating to section 317 the following:

“Sec. 317A. Temporary absence of aliens providing health care in developing
countries.”.

17 (b) ATTESTATION BY HEALTH CARE WORKERS.—

18 (1) ATTESTATION REQUIREMENT.—Section
19 212(a)(5) (8 U.S.C. 1182(a)(5)) is amended by add-
20 ing at the end the following:

21 “(E) HEALTH CARE WORKERS WITH
22 OTHER OBLIGATIONS.—

23 “(i) IN GENERAL.—An alien who
24 seeks to enter the United States for the

1 purpose of performing labor as a physician
2 or other health care worker is inadmissible
3 unless the alien submits to the Secretary of
4 Homeland Security or the Secretary of
5 State, as appropriate, an attestation that
6 the alien is not seeking to enter the United
7 States for such purpose during any period
8 in which the alien has an outstanding obli-
9 gation to the government of the alien's
10 country of origin or the alien's country of
11 residence.

12 “(ii) OBLIGATION DEFINED.—In this
13 subparagraph, the term ‘obligation’ means
14 an obligation incurred as part of a valid,
15 voluntary individual agreement in which
16 the alien received financial assistance to
17 defray the costs of education or training to
18 qualify as a physician or other health care
19 worker in consideration for a commitment
20 to work as a physician or other health care
21 worker in the alien's country of origin or
22 the alien's country of residence.

23 “(iii) WAIVER.—The Secretary of
24 Homeland Security may waive a finding of

1 inadmissibility under clause (i) if the Sec-
2 retary determines that—

3 “(I) the obligation was incurred
4 by coercion or other improper means;

5 “(II) the alien and the govern-
6 ment of the country to which the alien
7 has an outstanding obligation have
8 reached a valid, voluntary agreement,
9 pursuant to which the alien’s obliga-
10 tion has been deemed satisfied, or the
11 alien has shown to the satisfaction of
12 the Secretary that the alien has been
13 unable to reach such an agreement
14 because of coercion or other improper
15 means; or

16 “(III) the obligation should not
17 be enforced due to other extraordinary
18 circumstances, including undue hard-
19 ship that would be suffered by the
20 alien in the absence of a waiver.”.

21 (2) EFFECTIVE DATE.—The amendment made
22 by paragraph (1) shall take effect on the date that
23 is 180 days after the date of the enactment of this
24 Act.

1 (3) APPLICATION.—Not later than the effective
2 date described in paragraph (2), the Secretary shall
3 begin to carry out subparagraph (E) of section
4 212(a)(5) of the Immigration and Nationality Act,
5 as added by paragraph (1), including the require-
6 ment for the attestation and the granting of a waiv-
7 er described in clause (iii) of such subparagraph (E),
8 regardless of whether regulations to implement such
9 subparagraph have been promulgated.

10 **SEC. 2317. EXTENSION AND IMPROVEMENT OF THE IRAQI**
11 **SPECIAL IMMIGRANT VISA PROGRAM.**

12 The Refugee Crisis in Iraq Act of 2007 (8 U.S.C.
13 1157 note) is amended—

14 (1) in section 1242, by amending subsection (c)
15 to read as follows:

16 “(c) IMPROVED APPLICATION PROCESS.—Not later
17 than 120 days after the date of the enactment of the Bor-
18 der Security, Economic Opportunity, and Immigration
19 Modernization Act, the Secretary of State and the Sec-
20 retary of Homeland Security, in consultation with the Sec-
21 retary of Defense, shall improve the efficiency by which
22 applications for special immigrant visas under section
23 1244(a) are processed so that all steps incidental to the
24 issuance of such visas, including required screenings and
25 background checks, are completed not later than 9 months

1 after the date on which an eligible alien applies for such
2 visa.”;

3 (2) in section 1244—

4 (A) subsection (b)—

5 (i) in paragraph (1)—

6 (I) by amending subparagraph

7 (B) to read as follows:

8 “(B) was or is employed in Iraq on or
9 after March 20, 2003, for not less than 1 year,
10 by, or on behalf of—

11 “(i) the United States Government;

12 “(ii) a media or nongovernmental or-
13 ganization headquartered in the United
14 States; or

15 “(iii) an organization or entity closely
16 associated with the United States mission
17 in Iraq that has received United States
18 Government funding through an official
19 and documented contract, award, grant, or
20 cooperative agreement;”;

21 (II) in subparagraph (C), by
22 striking “United States Government”
23 and inserting “an entity or organiza-
24 tion described in subparagraph (B)”;
25 and

1 (III) in subparagraph (D), by
2 striking by striking “United States
3 Government.” and inserting “such en-
4 tity or organization.”;

5 (ii) in paragraph (4)—

6 (I) by striking “A recommenda-
7 tion” and inserting the following:

8 “(A) IN GENERAL.—Except as provided
9 under subparagraph (B), a recommendation”;

10 (II) by striking “United States
11 Government prior” and inserting “an
12 entity or organization described in
13 paragraph (1)(B) prior”; and

14 (III) by adding at the end the
15 following:

16 “(B) REVIEW PROCESS FOR DENIAL BY
17 CHIEF OF MISSION.—

18 “(i) IN GENERAL.—An applicant who
19 has been denied Chief of Mission approval
20 required by subparagraph (A) shall—

21 “(I) receive a written decision;
22 and

23 “(II) be provided 120 days from
24 the date of the decision to request re-
25 opening of the decision to provide ad-

1 ditional information, clarify existing
2 information, or explain any unfavor-
3 able information.

4 “(ii) SENIOR COORDINATOR.—The
5 Secretary of State shall designate, in the
6 Embassy of the United States in Baghdad,
7 Iraq, a senior coordinator responsible for
8 overseeing the efficiency and integrity of
9 the processing of special immigrant visas
10 under this section, who shall be given—

11 “(I) sufficiently high security
12 clearance to review Chief of Mission
13 denials in cases that appear to have
14 relied upon insufficient or incorrect
15 information; and

16 “(II) responsibility for ensuring
17 that an applicant described in clause
18 (i) receives the information described
19 in clause (i)(I).”; and

20 (B) in subsection (c)(3), by adding at the
21 end the following:

22 “(C) SUBSEQUENT FISCAL YEARS.—Not-
23 withstanding subparagraphs (A) and (B), and
24 consistent with subsection (b), any unused bal-
25 ance of the total number of principal aliens who

1 may be provided special immigrant status under
2 this section in fiscal years 2008 through 2012
3 may be carried forward and provided through
4 the end of fiscal year 2018.”; and

5 (3) in section 1248, by adding at the end the
6 following:

7 “(f) REPORT ON IMPROVEMENTS.—

8 “(1) IN GENERAL.—Not later than 120 days
9 after the date of the enactment of the Border Secu-
10 rity, Economic Opportunity, and Immigration Mod-
11 ernization Act, the Secretary of State and the Sec-
12 retary of Homeland Security, in consultation with
13 the Secretary of Defense, shall submit a report, with
14 a classified annex, if necessary, to—

15 “(A) the Committee on the Judiciary of
16 the Senate;

17 “(B) the Committee on Foreign Relations
18 of the Senate;

19 “(C) the Committee on the Judiciary of
20 the House of Representatives; and

21 “(D) the Committee on Foreign Affairs of
22 the House of Representatives.

23 “(2) CONTENTS.—The report submitted under
24 paragraph (1) shall describe the implementation of
25 improvements to the processing of applications for

1 special immigrant visas under section 1244(a), in-
2 cluding information relating to—

3 “(A) enhancing existing systems for con-
4 ducting background and security checks of per-
5 sons applying for special immigrant status,
6 which shall—

7 “(i) support immigration security; and

8 “(ii) provide for the orderly processing
9 of such applications without delay;

10 “(B) the financial, security, and personnel
11 considerations and resources necessary to carry
12 out this subtitle;

13 “(C) the number of aliens who have ap-
14 plied for special immigrant visas under section
15 1244 during each month of the preceding fiscal
16 year;

17 “(D) the reasons for the failure to expedi-
18 tiously process any applications that have been
19 pending for longer than 9 months;

20 “(E) the total number of applications that
21 are pending due to the failure—

22 “(i) to receive approval from the Chief
23 of Mission;

1 “(ii) for U.S. Citizenship and Immi-
2 gration Services to complete the adjudica-
3 tion of the Form I-360;

4 “(iii) to conduct a visa interview; or

5 “(iv) to issue the visa to an eligible
6 alien;

7 “(F) the average wait times for an appli-
8 cant at each of the stages described in subpara-
9 graph (E);

10 “(G) the number of denials or rejections at
11 each of the stages described in subparagraph
12 (E); and

13 “(H) a breakdown of reasons for denials at
14 by the Chief of Mission based on the categories
15 already made available to denied special immi-
16 grant visa applicants in the denial letter sent to
17 them by the Chief of Mission.

18 “(g) PUBLIC QUARTERLY REPORTS.—Not later than
19 120 days after the date of the enactment of the Border
20 Security, Economic Opportunity, and Immigration Mod-
21 ernization Act, and every 3 months thereafter, the Sec-
22 retary of State and the Secretary of Homeland Security,
23 in consultation with the Secretary of Defense, shall pub-
24 lish a report on the website of the Department of State
25 that describes the efficiency improvements made in the

1 process by which applications for special immigrant visas
2 under section 1244(a) are processed, including informa-
3 tion described in subparagraphs (C) through (H) of sub-
4 section (f)(2).”.

5 **SEC. 2318. EXTENSION AND IMPROVEMENT OF THE AF-**
6 **GHAN SPECIAL IMMIGRANT VISA PROGRAM.**

7 Section 602(b) of the Afghan Allies Protection Act
8 of 2009 (8 U.S.C. 1101 note) is amended—

9 (1) in paragraph (2)—

10 (A) in subparagraph (A)—

11 (i) by amending clause (ii) to read as
12 follows:

13 “(ii) was or is employed in Afghani-
14 stan on or after October 7, 2001, for not
15 less than 1 year, by, or on behalf of—

16 “(I) the United States Govern-
17 ment;

18 “(II) a media or nongovern-
19 mental organization headquartered in
20 the United States; or

21 “(III) an organization or entity
22 closely associated with the United
23 States mission in Afghanistan that
24 has received United States Govern-
25 ment funding through an official and

1 documented contract, award, grant, or
2 cooperative agreement;”;

3 (ii) in clause (iii), by striking “United
4 States Government” and inserting “an en-
5 tity or organization described in clause
6 (ii)”;

7 (iii) in clause (iv), by striking by
8 striking “United States Government.” and
9 inserting “such entity or organization.”;

10 (B) by amending subparagraph (B) to read
11 as follows:

12 “(B) FAMILY MEMBERS.—An alien is de-
13 scribed in this subparagraph if the alien is—

14 “(i) the spouse or minor child of a
15 principal alien described in subparagraph
16 (A) who is accompanying or following to
17 join the principal alien in the United
18 States; or

19 “(ii)(I) the spouse, child, parent or
20 sibling of a principal alien described in
21 subparagraph (A), whether or not accom-
22 panying or following to join; and

23 “(II) has experienced or is experi-
24 encing an ongoing serious threat as a con-
25 sequence of the qualifying employment of a

1 principal alien described in subparagraph
2 (A).”; and
3 (C) in subparagraph (D)—

4 (i) by striking “A recommendation”
5 and inserting the following:

6 “(i) IN GENERAL.—Except as pro-
7 vided under clause (ii), a recommenda-
8 tion”;

9 (ii) by striking “United States Gov-
10 ernment prior” and inserting “an entity or
11 organization described in paragraph
12 (2)(A)(ii) prior”; and

13 (iii) by adding at the end the fol-
14 lowing:

15 “(ii) REVIEW PROCESS FOR DENIAL
16 BY CHIEF OF MISSION.—

17 “(I) IN GENERAL.—An applicant
18 who has been denied Chief of Mission
19 approval shall—

20 “(aa) receive a written deci-
21 sion; and

22 “(bb) be provided 120 days
23 from the date of receipt of such
24 opinion to request reconsider-
25 ation of the decision to provide

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1 additional information, clarify ex-
2 isting information, or explain any
3 unfavorable information..

4 “(II) SENIOR COORDINATOR.—

5 The Secretary of State shall des-
6 ignate, in the Embassy of the United
7 States in Kabul, Afghanistan, a senior
8 coordinator responsible for overseeing
9 the efficiency and integrity of the
10 processing of special immigrant visas
11 under this section, who shall be
12 given—

13 “(aa) sufficiently high secu-
14 rity clearance to review Chief of
15 Mission denials in cases that ap-
16 pear to have relied upon insuffi-
17 cient or incorrect information;
18 and

19 “(bb) responsibility for en-
20 suring that an applicant de-
21 scribed in subclause (I) receives
22 the information described in sub-
23 clause (I)(aa).”;

24 (2) in paragraph (3)(C), by amending clause
25 (iii) to read as follows:

1 “(iii) FISCAL YEARS 2014 THROUGH
2 2018.—For each of the fiscal years 2014
3 through 2018, the total number of prin-
4 cipal aliens who may be provided special
5 immigrant status under this section may
6 not exceed the sum of—

7 “(I) 5,000;

8 “(II) the difference between the
9 number of special immigrant visas al-
10 located under this section for fiscal
11 years 2009 through 2013 and the
12 number of such allocated visas that
13 were issued; and

14 “(III) any unused balance of the
15 total number of principal aliens who
16 may be provided special immigrant
17 status in fiscal years 2014 through
18 2018 that have been carried for-
19 ward.”;

20 (3) in paragraph (4)—

21 (A) in the heading, by striking “PROHIBI-
22 TION ON FEES.—”and inserting “APPLICATION
23 PROCESS.—”;

24 (B) by striking “The Secretary” and in-
25 serting the following:

1 “(A) IN GENERAL.—Not later than 120
2 days after the date of enactment of the Border
3 Security, Economic Opportunity, and Immigra-
4 tion Modernization Act, the Secretary of State
5 and the Secretary of Homeland Security, in
6 consultation with the Secretary of Defense,
7 shall improve the efficiency by which applica-
8 tions for special immigrant visas under para-
9 graph (1) are processed so that all steps inci-
10 dental to the issuance of such visas, including
11 required screenings and background checks, are
12 completed not later than 6 months after the
13 date on which an eligible alien applies for such
14 visa.

15 “(B) PROHIBITION ON FEES.—The Sec-
16 retary”; and
17 (4) by adding at the end the following:

18 “(12) REPORT ON IMPROVEMENTS.—Not later
19 than 120 days after the date of the enactment of the
20 Border Security, Economic Opportunity, and Immi-
21 gration Modernization Act, the Secretary of State
22 and the Secretary of Homeland Security, in con-
23 sultation with the Secretary of Defense, shall submit
24 to the appropriate committees a report, with a clas-
25 sified annex, if necessary, that describes the imple-

1 mentation of improvements to the processing of ap-
2 plications for special immigrant visas under this sub-
3 section, including information relating to—

4 “(A) enhancing existing systems for con-
5 ducting background and security checks of per-
6 sons applying for special immigrant status,
7 which shall—

8 “(i) support immigration security; and

9 “(ii) provide for the orderly processing
10 of such applications without delay;

11 “(B) the financial, security, and personnel
12 considerations and resources necessary to carry
13 out this section;

14 “(C) the number of aliens who have ap-
15 plied for special immigrant visas under this
16 subsection during each month of the preceding
17 fiscal year;

18 “(D) the reasons for the failure to expedi-
19 tiously process any applications that have been
20 pending for longer than 9 months;

21 “(E) the total number of applications that
22 are pending due to the failure—

23 “(i) to receive approval from the Chief
24 of Mission;

1 “(ii) for U.S. Citizenship and Immi-
2 gration Services to complete the adjudica-
3 tion of the Form I-360;

4 “(iii) to conduct a visa interview; or

5 “(iv) to issue the visa to an eligible
6 alien;

7 “(F) the average wait times for an appli-
8 cant at each of the stages described in subpara-
9 graph (E);

10 “(G) the number of denials or rejections at
11 each of the stages described in subparagraph
12 (E); and

13 “(H) a breakdown of reasons for denials
14 by the Chief of Mission based on the categories
15 already made available to denied special immi-
16 grant visa applicants in the denial letter sent to
17 them by the Chief of Mission.

18 “(13) PUBLIC QUARTERLY REPORTS .—Not
19 later than 120 days after the date of the enactment
20 of the Border Security, Economic Opportunity, and
21 Immigration Modernization Act, and every 3 months
22 thereafter, the Secretary of State and the Secretary
23 of Homeland Security, in consultation with the Sec-
24 retary of Defense, shall publish a report on the
25 website of the Department of State that describes

1 the efficiency improvements made in the process by
2 which applications for special immigrant visas under
3 this subsection are processed, including information
4 described in subparagraph (C) through (H) of para-
5 graph (12).”.

6 **SEC. 2319. ELIMINATION OF SUNSETS FOR CERTAIN VISA**
7 **PROGRAMS.**

8 (a) SPECIAL IMMIGRANT NONMINISTER RELIGIOUS
9 WORKER PROGRAM.—Section 101(a)(27)(C)(ii) (8 U.S.C.
10 1101 (a)(27)(C)(ii)) is amended in subclauses (II) and
11 (III) by striking “before September 30, 2015,” both places
12 such term appears.

13 (b) EB–5 REGIONAL CENTER PROGRAM.—Section
14 610(b) of the Departments of Commerce, Justice, and
15 State, the Judiciary, and Related Agencies Appropriations
16 Act, 1993 (Public Law 102–395; 8 U.S.C. 1153 note) is
17 amended by striking “until September 30, 2015”.

18 **Subtitle D—Conrad State 30 and**
19 **Physician Access**

20 **SEC. 2401. CONRAD STATE 30 PROGRAM.**

21 Section 220(c) of the Immigration and Nationality
22 Technical Corrections Act of 1994 (Public Law 103–416;
23 8 U.S.C. 1182 note) is amended by striking “and before
24 September 30, 2015”.

1 **SEC. 2402. RETAINING PHYSICIANS WHO HAVE PRACTICED**
2 **IN MEDICALLY UNDERSERVED COMMU-**
3 **NITIES.**

4 Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended
5 by sections 2103(c), 2212(d)(2), and 2307(b), is further
6 amended by adding at the end the following:

7 “(O)(i) Alien physicians who have completed
8 service requirements of a waiver requested under
9 section 203(b)(2)(B)(ii), including alien physicians
10 who completed such service before the date of the
11 enactment of the Border Security, Economic Oppor-
12 tunity, and Immigration Modernization Act and any
13 spouses or children of such alien physicians.

14 “(ii) Nothing in this subparagraph may be con-
15 strued—

16 “(I) to prevent the filing of a petition with
17 the Secretary of Homeland Security for classi-
18 fication under section 204(a) or the filing of an
19 application for adjustment of status under sec-
20 tion 245 by an alien physician described in this
21 subparagraph prior to the date by which such
22 alien physician has completed the service de-
23 scribed in section 214(l) or worked full-time as
24 a physician for an aggregate of 5 years at the
25 location identified in the section 214(l) waiver
26 or in an area or areas designated by the Sec-

1 retary of Health and Human Services as having
2 a shortage of health care professionals; or

3 “(II) to permit the Secretary of Homeland
4 Security to grant such a petition or application
5 until the alien has satisfied all the requirements
6 of the waiver received under section 214(l).”.

7 **SEC. 2403. EMPLOYMENT PROTECTIONS FOR PHYSICIANS.**

8 (a) IN GENERAL.—Section 214(l)(1)(C) (8 U.S.C.
9 1184(l)(1)(C)) is amended by striking clauses (i) and (ii)
10 and inserting the following:

11 “(i) the alien demonstrates a bona fide
12 offer of full-time employment, at a health care
13 organization, which employment has been deter-
14 mined by the Secretary of Homeland Security
15 to be in the public interest; and

16 “(ii) the alien agrees to begin employment
17 with the health facility or health care organiza-
18 tion in a geographic area or areas which are
19 designated by the Secretary of Health and
20 Human Services as having a shortage of health
21 care professionals by the later of the date that
22 is 90 days after receiving such waiver, 90 days
23 after completing graduate medical education or
24 training under a program approved pursuant to
25 section 212(j)(1), or 90 days after receiving

1 nonimmigrant status or employment authoriza-
2 tion, provided that the alien or the alien's em-
3 ployer petitions for such nonimmigrant status
4 or employment authorization within 90 days of
5 completing graduate medical or training and
6 agrees to continue to work for a total of not
7 less than 3 years in any status authorized for
8 such employment under this subsection, un-
9 less—

10 “(I) the Secretary determines that ex-
11 tenuating circumstances exist that justify a
12 lesser period of employment at such facility
13 or organization, in which case the alien
14 shall demonstrate another bona fide offer
15 of employment at a health facility or
16 health care organization, for the remainder
17 of such 3-year period;

18 “(II) the interested agency that re-
19 quested the waiver attests that extenuating
20 circumstances exist that justify a lesser pe-
21 riod of employment at such facility or or-
22 ganization in which case the alien shall
23 demonstrate another bona fide offer of em-
24 ployment at a health facility or health care
25 organization so designated by the Sec-

1 retary of Health and Human Services, for
2 the remainder of such 3-year period; or

3 “(III) if the alien elects not to pursue
4 a determination of extenuating cir-
5 cumstances pursuant to subclause (I) or
6 (II), the alien terminates the alien’s em-
7 ployment relationship with such facility or
8 organization, in which case the alien shall
9 be employed for the remainder of such 3-
10 year period, and 1 additional year for each
11 termination, at another health facility or
12 health care organization in a geographic
13 area or areas which are designated by the
14 Secretary of Health and Human Services
15 as having a shortage of health care profes-
16 sionals; and”.

17 (b) CONTRACT REQUIREMENTS.—Section 214(l) (8
18 U.S.C. 1184(l)) is amended by adding at the end the fol-
19 lowing:

20 “(4) An alien granted a waiver under paragraph
21 (1)(C) shall enter into an employment agreement with the
22 contracting health facility or health care organization
23 that—

24 “(A) specifies the maximum number of on-call
25 hours per week (which may be a monthly average)

1 that the alien will be expected to be available and
2 the compensation the alien will receive for on-call
3 time;

4 “(B) specifies whether the contracting facility
5 or organization will pay for the alien’s malpractice
6 insurance premiums, including whether the employer
7 will provide malpractice insurance and, if so, the
8 amount of such insurance that will be provided;

9 “(C) describes all of the work locations that the
10 alien will work and a statement that the contracting
11 facility or organization will not add additional work
12 locations without the approval of the Federal agency
13 or State agency that requested the waiver; and

14 “(D) does not include a non-compete provision.

15 “(5) An alien granted a waiver under paragraph
16 (1)(C) whose employment relationship with a health facil-
17 ity or health care organization terminates during the 3-
18 year service period required by such paragraph—

19 “(A) shall have a period of 120 days beginning
20 on the date of such termination of employment to
21 submit to the Secretary of Homeland Security appli-
22 cations or petitions to commence employment with
23 another contracting health facility or health care or-
24 ganization in a geographic area or areas which are
25 designated by the Secretary of Health and Human

1 Services as having a shortage of health care profes-
2 sionals;

3 “(B) shall be considered to be maintaining law-
4 ful status in an authorized stay during the 120-day
5 period referred to in subsection (A); and

6 “(C) shall not be considered to be fulfilling the
7 3-year term of service during the 120-day period re-
8 ferred to in subparagraph (A).”.

9 **SEC. 2404. ALLOTMENT OF CONRAD 30 WAIVERS.**

10 (a) IN GENERAL.—Section 214(l) (8 U.S.C. 1184(l)),
11 as amended by section 333(b), is further amended by add-
12 ing at the end the following:

13 “(6)(A)(i) All States shall be allotted a total of 35
14 waivers under paragraph (1)(B) for a fiscal year if 90 per-
15 cent of the waivers available to the States receiving at
16 least 5 waivers were used in the previous fiscal year.

17 “(ii) When an allocation has occurred under clause
18 (i), all States shall be allotted an additional 5 waivers
19 under paragraph (1)(B) for each subsequent fiscal year
20 if 90 percent of the waivers available to the States receiv-
21 ing at least 5 waivers were used in the previous fiscal year.
22 If the States are allotted 45 or more waivers for a fiscal
23 year, the States will only receive an additional increase
24 of 5 waivers the following fiscal year if 95 percent of the

1 waivers available to the States receiving at least 1 waiver
2 were used in the previous fiscal year.

3 “(B) Any increase in allotments under subparagraph
4 (A) shall be maintained indefinitely, unless in a fiscal year,
5 the total number of such waivers granted is 5 percent
6 lower than in the last year in which there was an increase
7 in the number of waivers allotted pursuant to this para-
8 graph, in which case—

9 “(i) the number of waivers allotted shall be de-
10 creased by 5 for all States beginning in the next fis-
11 cal year; and

12 “(ii) each additional 5 percent decrease in such
13 waivers granted from the last year in which there
14 was an increase in the allotment, shall result in an
15 additional decrease of 5 waivers allotted for all
16 States, provided that the number of waivers allotted
17 for all States shall not drop below 30.”.

18 (b) ACADEMIC MEDICAL CENTERS.—Section
19 214(l)(1)(D) (8 U.S.C. 1184(l)(1)(D)) is amended—

20 (1) in clause (ii), by striking “and” at the end;

21 (2) in clause (iii), by striking the period at the
22 end and inserting “; and”; and

23 (3) by adding at the end the following:

24 “(iv) in the case of a request by an inter-
25 ested State agency—

1 “(I) the head of such agency deter-
2 mines that the alien is to practice medicine
3 in, or be on the faculty of a residency pro-
4 gram at, an academic medical center (as
5 that term is defined in section
6 411.355(e)(2) of title 42, Code of Federal
7 Regulation, or similar successor regula-
8 tion), without regard to whether such facil-
9 ity is located within an area designated by
10 the Secretary of Health and Human Serv-
11 ices as having a shortage of health care
12 professionals; and

13 “(II) the head of such agency deter-
14 mines that—

15 “(aa) the alien physician’s work
16 is in the public interest; and

17 “(bb) the grant of such waiver
18 would not cause the number of the
19 waivers granted on behalf of aliens for
20 such State for a fiscal year (within
21 the limitation in subparagraph (B)
22 and subject to paragraph (6)) in ac-
23 cordance with the conditions of this
24 clause to exceed 3.”.

1 **SEC. 2405. AMENDMENTS TO THE PROCEDURES, DEFINI-**
2 **TIONS, AND OTHER PROVISIONS RELATED TO**
3 **PHYSICIAN IMMIGRATION.**

4 (a) DUAL INTENT FOR PHYSICIANS SEEKING GRAD-
5 UATE MEDICAL TRAINING.—Section 214(b) (8 U.S.C.
6 1184(b)) is amended by striking “(other than a non-
7 immigrant described in subparagraph (L) or (V) of section
8 101(a)(15), and other than a nonimmigrant described in
9 any provision of section 101(a)(15)(H)(i) except subclause
10 (b1) of such section)” and inserting “(other than a non-
11 immigrant described in subparagraph (L) or (V) of section
12 101(a)(15), a nonimmigrant described in any provision of
13 section 101(a)(15)(H)(i), except subclause (b1) of such
14 section, and an alien coming to the United States to re-
15 ceive graduate medical education or training as described
16 in section 212(j) or to take examinations required to re-
17 ceive graduate medical education or training as described
18 in section 212(j))”.

19 (b) ALLOWABLE VISA STATUS FOR PHYSICIANS FUL-
20 FILLING WAIVER REQUIREMENTS IN MEDICALLY UNDER-
21 SERVED AREAS.—Section 214(l)(2)(A) (8 U.S.C.
22 1184(l)(2)(A)) is amended by striking “an alien described
23 in section 101(a)(15)(H)(i)(b).” and inserting “any status
24 authorized for employment under this Act.”.

25 (c) SHORT TERM WORK AUTHORIZATION FOR PHYSI-
26 CIANS COMPLETING THEIR RESIDENCIES.—A physician

1 completing graduate medical education or training as de-
2 scribed in section 212(j) of the Immigration and Nation-
3 ality Act (8 U.S.C. 1182(j)) as a nonimmigrant described
4 section 101(a)(15)(H)(i) of such Act (8 U.S.C.
5 1101(a)(15)(H)(i)) shall have such nonimmigrant status
6 automatically extended until October 1 of the fiscal year
7 for which a petition for a continuation of such non-
8 immigrant status has been submitted in a timely manner
9 and where the employment start date for the beneficiary
10 of such petition is October 1 of that fiscal year. Such phy-
11 sician shall be authorized to be employed incident to status
12 during the period between the filing of such petition and
13 October 1 of such fiscal year. However, the physician's
14 status and employment authorization shall terminate 30
15 days from the date such petition is rejected, denied or re-
16 voked. A physician's status and employment authorization
17 will automatically extend to October 1 of the next fiscal
18 year if all visas as described in such section
19 101(a)(15)(H)(i) authorized to be issued for the fiscal
20 year have been issued.

21 (d) APPLICABILITY OF SECTION 212(e) TO SPOUSES
22 AND CHILDREN OF J-1 EXCHANGE VISITORS.—A spouse
23 or child of an exchange visitor described in section
24 101(a)(15)(J) of the Immigration and Nationality Act (8
25 U.S.C. 1101(a)(15)(J)) shall not be subject to the require-

1 ments of section 212(e) of the Immigration and Nation-
2 ality Act (8 U.S.C. 1182(e)).

3 **Subtitle E—Integration**

4 **SEC. 2501. DEFINITIONS.**

5 In this subtitle:

6 (1) CHIEF.—The term “Chief” means the Chief
7 of the Office.

8 (2) FOUNDATION.—The term “Foundation”
9 means the United States Citizenship Foundation es-
10 tablished pursuant to section 2531.

11 (3) IEACA GRANTS.—The term “IEACA
12 grants” means Initial Entry, Adjustment, and Citi-
13 zenship Assistance grants authorized under section
14 2537.

15 (4) IMMIGRANT INTEGRATION.—The term “im-
16 migrant integration” means the process by which
17 immigrants—

18 (A) join the mainstream of civic life by en-
19 gaging and sharing ownership in their local
20 community, the United States, and the prin-
21 ciples of the Constitution;

22 (B) attain financial self-sufficiency and up-
23 ward economic mobility for themselves and their
24 family members; and

1 (C) acquire English language skills and re-
2 lated cultural knowledge necessary to effectively
3 participate in their community.

4 (5) LINGUISTIC INTEGRATION.—The term “lin-
5 guistic integration” means the acquisition, by limited
6 English proficient individuals, of English language
7 skills and related cultural knowledge necessary to
8 meaningfully and effectively fulfill their roles as
9 community members, family members, and workers.

10 (6) OFFICE.—The term “Office” means the Of-
11 fice of Citizenship and New Americans established in
12 U.S. Citizenship and Immigration Services under
13 section 2511.

14 (7) RECEIVING COMMUNITIES.—The term “re-
15 ceiving communities” means the long-term residents
16 of the communities in which immigrants settle.

17 (8) TASK FORCE.—The term “Task Force”
18 means the Task Force on New Americans estab-
19 lished pursuant to section 2521.

20 (9) USCF COUNCIL.—The term “USCF Coun-
21 cil” means the Council of Directors of the Founda-
22 tion.

1 **CHAPTER 1—CITIZENSHIP AND NEW**
2 **AMERICANS**
3 **Subchapter A—Office of Citizenship and New**
4 **Americans**

5 **SEC. 2511. OFFICE OF CITIZENSHIP AND NEW AMERICANS.**

6 (a) RENAMING OFFICE OF CITIZENSHIP.—

7 (1) IN GENERAL.—Beginning on the date of the
8 enactment of this Act, the Office of Citizenship in
9 U.S. Citizenship and Immigration Services shall be
10 referred to as the “Office of Citizenship and New
11 Americans”.

12 (2) REFERENCES.—Any reference in a law, reg-
13 ulation, document, paper, or other record of the
14 United States to the Office of Citizenship in U.S.
15 Citizenship and Immigration Services shall be
16 deemed to be a reference to the Office of Citizenship
17 and New Americans.

18 (3) TECHNICAL AND CONFORMING AMEND-
19 MENTS.—Section 451 of the Homeland Security Act
20 of 2002 (6 U.S.C. 271) is amended—

21 (A) in the section heading, by striking
22 “**BUREAU OF**” and inserting “**U.S.**”;

23 (B) in subsection (a)(1), by striking “the
24 ’Bureau of” and inserting “‘U.S.’”;

1 (C) by striking “the Bureau of” each place
2 such terms appears and inserting “U.S.”; and

3 (D) in subsection (f)—

4 (i) by amending the subsection head-
5 ing to read as follows: “OFFICE OF CITI-
6 ZENSHIP AND NEW AMERICANS”; and

7 (ii) by striking paragraph (1) and in-
8 serting the following:

9 “(1) CHIEF.—The Office of Citizenship and
10 New Americans shall be within U.S. Citizenship and
11 Immigration Services and shall be headed by the
12 Chief of the Office of Citizenship and New Ameri-
13 cans.”.

14 (b) FUNCTIONS.—Section 451(f) of such Act (6
15 U.S.C. 271(f)), as amended by subsection (a)(3)(D), is
16 further amended by striking paragraph (2) and inserting
17 the following:

18 “(2) FUNCTIONS.—The Chief of the Office of
19 Citizenship and New Americans shall—

20 “(A) promote institutions and provide
21 training on citizenship responsibilities for aliens
22 interested in becoming naturalized citizens of
23 the United States, including the development of
24 educational materials for such aliens;

1 “(B) provide general leadership, consulta-
2 tion, and coordination of the immigrant integra-
3 tion programs across the Federal Government
4 and with State and local entities;

5 “(C) in coordination with the Task Force
6 on New Americans established under section
7 2521 of the Border Security, Economic Oppor-
8 tunity, and Immigration Modernization Act—

9 “(i) advise the Director of U.S. Citi-
10 zenship and Immigration Services, the Sec-
11 retary of Homeland Security, and the Do-
12 mestic Policy Council, on—

13 “(I) the challenges and opportu-
14 nities relating to the linguistic, eco-
15 nomic, and civic integration of immi-
16 grants and their young children and
17 progress in meeting integration goals
18 and indicators; and

19 “(II) immigrant integration con-
20 siderations relating to Federal budg-
21 ets;

22 “(ii) establish national goals for intro-
23 ducing new immigrants into the United
24 States and measure the degree to which
25 such goals are met;

1 “(iii) evaluate the scale, quality, and
2 effectiveness of Federal Government efforts
3 in immigrant integration and provide ad-
4 vice on appropriate actions; and

5 “(iv) identify the integration implica-
6 tions of new or proposed immigration poli-
7 cies and provide recommendations for ad-
8 dressing such implications;

9 “(D) serve as a liaison and intermediary
10 with State and local governments and other en-
11 tities to assist in establishing local goals, task
12 forces, and councils to assist in—

13 “(i) introducing immigrants into the
14 United States; and

15 “(ii) promoting citizenship education
16 and awareness among aliens interested in
17 becoming naturalized citizens of the United
18 States;

19 “(E) coordinate with other Federal agen-
20 cies to provide information to State and local
21 governments on the demand for existing Fed-
22 eral and State English education programs and
23 best practices for immigrants who recently ar-
24 rived in the United States;

1 “(F) assist States in coordinating the ac-
2 tivities of the grant programs authorized under
3 sections 2537 and 2538 of the Border Security,
4 Economic Opportunity, and Immigration Mod-
5 ernization Act;

6 “(G) submit a biennial report to the appro-
7 priate congressional committees that describes
8 the activities of the Office of Citizenship and
9 New Americans; and

10 “(H) carry out such other functions and
11 activities as Secretary may assign.”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 subsections (a) and (b) shall take effect on the date that
14 is 1 year after the date of the enactment of this Act.

15 **Subchapter B—Task Force on New**
16 **Americans**

17 **SEC. 2521. ESTABLISHMENT.**

18 (a) IN GENERAL.—The Secretary shall establish a
19 Task Force on New Americans.

20 (b) FULLY FUNCTIONAL.—The Task Force shall be
21 fully functional not later than 18 months after the date
22 of the enactment of this Act.

23 **SEC. 2522. PURPOSE.**

24 The purposes of the Task Force are—

1 (1) to establish a coordinated Federal program
2 and policy response to immigrant integration issues;
3 and

4 (2) to advise and assist the Federal Govern-
5 ment in identifying and fostering policies to carry
6 out the policies and goals established under this
7 chapter.

8 **SEC. 2523. MEMBERSHIP.**

9 (a) IN GENERAL.—The Task Force shall be com-
10 prised of—

11 (1) the Secretary, who shall serve as Chair of
12 the Task Force;

13 (2) the Secretary of the Treasury;

14 (3) the Attorney General;

15 (4) the Secretary of Commerce;

16 (5) the Secretary of Labor;

17 (6) the Secretary of Health and Human Serv-
18 ices;

19 (7) the Secretary of Housing and Urban Devel-
20 opment;

21 (8) the Secretary of Transportation;

22 (9) the Secretary of Education;

23 (10) the Director of the Office of Management
24 and Budget;

1 (11) the Administrator of the Small Business
2 Administration;

3 (12) the Director of the Domestic Policy Coun-
4 cil;

5 (13) the Director of the National Economic
6 Council; and

7 (14) the National Security Advisor.

8 (b) DELEGATION.—A member of the Task Force may
9 delegate a senior official, at the Assistant Secretary, Dep-
10 uty Administrator, Deputy Director, or Assistant Attorney
11 General level to perform the functions of a Task Force
12 member described in section 2524.

13 **SEC. 2524. FUNCTIONS.**

14 (a) MEETINGS; FUNCTIONS.—The Task Force
15 shall—

16 (1) meet at the call of the Chair; and

17 (2) perform such functions as the Secretary
18 may prescribe.

19 (b) COORDINATED RESPONSE.—The Task Force
20 shall work with executive branch agencies—

21 (1) to provide a coordinated Federal response
22 to issues that impact the lives of new immigrants
23 and receiving communities, including—

24 (A) access to youth and adult education
25 programming;

- 1 (B) workforce training;
- 2 (C) health care policy;
- 3 (D) access to naturalization; and
- 4 (E) community development challenges;
- 5 and

6 (2) to ensure that Federal programs and poli-
7 cies adequately address such impacts.

8 (c) LIAISONS.—Members of the Task Force shall
9 serve as liaisons to their respective agencies to ensure the
10 quality and timeliness of their agency’s participation in ac-
11 tivities of the Task Force, including—

- 12 (1) creating integration goals and indicators;
- 13 (2) implementing the biannual consultation
14 process with the agency’s State and local counter-
15 parts; and
- 16 (3) reporting on agency data collection, policy,
17 and program efforts relating to achieving the goals
18 and indicators referred to in paragraph (1).

19 (d) RECOMMENDATIONS.—Not later than 18 months
20 after the end of the period specified in section 2521(b),
21 the Task Force shall—

- 22 (1) provide recommendations to the Domestic
23 Policy Council and the Secretary on the effects of
24 pending legislation and executive branch policy pro-
25 posals;

1 (2) suggest changes to Federal programs or
2 policies to address issues of special importance to
3 new immigrants and receiving communities;

4 (3) review and recommend changes to policies
5 that have a distinct impact on new immigrants and
6 receiving communities; and

7 (4) assist in the development of legislative and
8 policy proposals of special importance to new immi-
9 grants and receiving communities.

10 **CHAPTER 2—PUBLIC-PRIVATE**
11 **PARTNERSHIP**

12 **SEC. 2531. ESTABLISHMENT OF UNITED STATES CITIZEN-**
13 **SHIP FOUNDATION.**

14 The Secretary, acting through the Director of U.S.
15 Citizenship and Immigration Services, is authorized to es-
16 tablish a nonprofit corporation or a not-for-profit, public
17 benefit, or similar entity, which shall be known as the
18 “United States Citizenship Foundation”.

19 **SEC. 2532. FUNDING.**

20 (a) GIFTS TO FOUNDATION.—In order to carry out
21 the purposes set forth in section 2533, the Foundation
22 may—

23 (1) solicit, accept, and make gifts of money and
24 other property in accordance with section 501(c)(3)
25 of the Internal Revenue Code of 1986;

1 (2) engage in coordinated work with the De-
2 partment, including the Office and U.S. Citizenship
3 and Immigration Services; and

4 (3) accept, hold, administer, invest, and spend
5 any gift, devise, or bequest of real or personal prop-
6 erty made to the Foundation.

7 (b) GIFTS TO OFFICE OF CITIZENSHIP AND NEW
8 AMERICANS.—The Office may accept gifts from the Foun-
9 dation to support the functions of the Office.

10 **SEC. 2533. PURPOSES.**

11 The purposes of the Foundation are—

12 (1) to expand citizenship preparation programs
13 for lawful permanent residents;

14 (2) to provide direct assistance for aliens seek-
15 ing provisional immigrant status, legal permanent
16 resident status, or naturalization as a United States
17 citizen; and

18 (3) to coordinate immigrant integration with
19 State and local entities.

20 **SEC. 2534. AUTHORIZED ACTIVITIES.**

21 The Foundation shall carry out its purpose by—

22 (1) making United States citizenship instruc-
23 tion and naturalization application services acces-
24 sible to low-income and other underserved lawful
25 permanent resident populations;

1 (2) developing, identifying, and sharing best
2 practices in United States citizenship preparation;

3 (3) supporting innovative and creative solutions
4 to barriers faced by those seeking naturalization;

5 (4) increasing the use of, and access to, tech-
6 nology in United States citizenship preparation pro-
7 grams;

8 (5) engaging receiving communities in the
9 United States citizenship and civic integration proc-
10 ess;

11 (6) administering the New Citizens Award Pro-
12 gram to recognize, in each calendar year, not more
13 than 10 United States citizens who—

14 (A) have made outstanding contributions
15 to the United States; and

16 (B) have been naturalized during the 10-
17 year period ending on the date of such recogni-
18 tion;

19 (7) fostering public education and awareness;

20 (8) coordinate its immigrant integration efforts
21 with the Office;

22 (9) awarding grants to eligible public or private
23 nonprofit organizations under section 2537.

24 (10) awarding grants to State and local govern-
25 ments under section 2538.

1 **SEC. 2535. COUNCIL OF DIRECTORS.**

2 (a) MEMBERS.—To the extent consistent with section
3 501(c)(3) of the Internal Revenue Code of 1986, the
4 Foundation shall have a Council of Directors, which shall
5 be comprised of—

6 (1) the Director of U.S. Citizenship and Immi-
7 gration Services;

8 (2) the Chief of the Office of Citizenship and
9 New Americans; and

10 (3) 10 directors, appointed by the ex-officio di-
11 rectors designated in paragraphs (1) and (2), from
12 national community-based organizations that pro-
13 mote and assist permanent residents with natu-
14 ralization.

15 (b) APPOINTMENT OF EXECUTIVE DIRECTOR.—The
16 USCF Council shall appoint an Executive Director, who
17 shall oversee the day-to-day operations of the Foundation.

18 **SEC. 2536. POWERS.**

19 The Executive Director is authorized to carry out the
20 purposes set forth in section 2533 on behalf of the Foun-
21 dation by—

22 (1) accepting, holding, administering, investing,
23 and spending any gift, devise, or bequest of real or
24 personal property made to the Foundation;

25 (2) entering into contracts and other financial
26 assistance agreements with individuals, public or pri-

1 vate organizations, professional societies, and gov-
2 ernment agencies to carry out the functions of the
3 Foundation;

4 (3) entering into such other contracts, leases,
5 cooperative agreements, and other transactions as
6 the Executive Director considers appropriate to
7 carry out the activities of the Foundation; and

8 (4) charging such fees for professional services
9 furnished by the Foundation as the Executive Direc-
10 tor determines reasonable and appropriate.

11 **SEC. 2537. INITIAL ENTRY, ADJUSTMENT, AND CITIZENSHIP**
12 **ASSISTANCE GRANT PROGRAM.**

13 (a) AUTHORIZATION.—The Secretary, acting through
14 the Director of U.S. Citizenship and Immigration Serv-
15 ices, may award Initial Entry, Adjustment, and Citizen-
16 ship Assistance grants to eligible public or private, non-
17 profit organizations.

18 (b) USE OF GRANT FUNDS.—IEACA grants shall be
19 used for the design and implementation of programs that
20 provide direct assistance, within the scope of the author-
21 ized practice of immigration law—

22 (1) to aliens who are preparing an initial appli-
23 cation for registered provisional immigrant status
24 under section 245B of the Immigration and Nation-
25 ality Act and to aliens who are preparing an initial

1 application for blue card status under section 2211,
2 including assisting applicants in—

3 (A) screening to assess prospective appli-
4 cants' potential eligibility or lack of eligibility;

5 (B) completing applications;

6 (C) gathering proof of identification, em-
7 ployment, residence, and tax payment;

8 (D) gathering proof of relationships of eli-
9 gible family members;

10 (E) applying for any waivers for which ap-
11 plicants and qualifying family members may be
12 eligible; and

13 (F) any other assistance that the Secretary
14 or grantee considers useful to aliens who are in-
15 terested in applying for registered provisional
16 immigrant status;

17 (2) to aliens seeking to adjust their status
18 under section 245, 245B, 245C, or 245F of the Im-
19 migration and Nationality Act;

20 (3) to legal permanent residents seeking to be-
21 come naturalized United States citizens; and

22 (4) to applicants on—

23 (A) the rights and responsibilities of
24 United States citizenship;

1 (B) civics-based English as a second lan-
2 guage;

3 (C) civics, with a special emphasis on com-
4 mon values and traditions of Americans, includ-
5 ing an understanding of the history of the
6 United States and the principles of the Con-
7 stitution; and

8 (D) applying for United States citizenship.

9 **SEC. 2538. PILOT PROGRAM TO PROMOTE IMMIGRANT IN-**
10 **TEGRATION AT STATE AND LOCAL LEVELS.**

11 (a) GRANTS AUTHORIZED.—The Chief shall establish
12 a pilot program through which the Chief may award
13 grants, on a competitive basis, to States and local govern-
14 ments or other qualifying entities, in collaboration with
15 State and local governments —

16 (1) to establish New Immigrant Councils to
17 carry out programs to integrate new immigrants; or

18 (2) to carry out programs to integrate new im-
19 migrants.

20 (b) APPLICATION.—A State or local government de-
21 siring a grant under this section shall submit an applica-
22 tion to the Chief at such time, in such manner, and con-
23 taining such information as the Chief may reasonably re-
24 quire, including—

1 (1) a proposal to meet an objective or combina-
2 tion of objectives set forth in subsection (d)(3);

3 (2) the number of new immigrants in the appli-
4 cant's jurisdiction; and

5 (3) a description of the challenges in intro-
6 ducing and integrating new immigrants into the
7 State or local community.

8 (c) PRIORITY.—In awarding grants under this sec-
9 tion, the Chief shall give priority to States and local gov-
10 ernments or other qualifying entities that—

11 (1) use matching funds from non-Federal
12 sources, which may include in-kind contributions;

13 (2) demonstrate collaboration with public and
14 private entities to achieve the goals of the com-
15 prehensive plan developed pursuant to subsection
16 (d)(3);

17 (3) are 1 of the 10 States with the highest rate
18 of foreign-born residents; or

19 (4) have experienced a large increase in the
20 population of immigrants during the most recent 10-
21 year period relative to past migration patterns,
22 based on data compiled by the Office of Immigration
23 Statistics or the United States Census Bureau.

24 (d) AUTHORIZED ACTIVITIES.—A grant awarded
25 under this subsection may be used—

1 (1) to form a New Immigrant Council, which
2 shall—

3 (A) consist of between 15 and 19 individ-
4 uals, inclusive, from the State, local govern-
5 ment, or qualifying organization;

6 (B) include, to the extent practicable, rep-
7 resentatives from—

8 (i) business;

9 (ii) faith-based organizations;

10 (iii) civic organizations;

11 (iv) philanthropic organizations;

12 (v) nonprofit organizations, including
13 those with legal and advocacy experience
14 working with immigrant communities;

15 (vi) key education stakeholders, such
16 as State educational agencies, local edu-
17 cational agencies, community colleges, and
18 teachers;

19 (vii) State adult education offices;

20 (viii) State or local public libraries;

21 and

22 (ix) State or local governments; and

23 (C) meet not less frequently than once
24 each quarter;

1 (2) to provide subgrants to local communities,
2 city governments, municipalities, nonprofit organiza-
3 tions (including veterans' and patriotic organiza-
4 tions) or other qualifying entities;

5 (3) to develop, implement, expand, or enhance
6 a comprehensive plan to introduce and integrate new
7 immigrants into the State by—

8 (A) improving English language skills;

9 (B) engaging caretakers with limited
10 English proficiency in their child's education
11 through interactive parent and child literacy ac-
12 tivities;

13 (C) improving and expanding access to
14 workforce training programs;

15 (D) teaching United States history, civics
16 education, citizenship rights, and responsibil-
17 ities;

18 (E) promoting an understanding of the
19 form of government and history of the United
20 States and the principles of the Constitution;

21 (F) improving financial literacy; and

22 (G) focusing on other key areas of impor-
23 tance to integration in our society; and

24 (4) to engage receiving communities in the citi-
25 zenship and civic integration process by—

1 (A) increasing local service capacity;

2 (B) building meaningful connections be-
3 tween newer immigrants and long-time resi-
4 dents;

5 (C) communicating the contributions of re-
6 ceiving communities and new immigrants; and

7 (D) engaging leaders from all sectors of
8 the community.

9 (e) REPORTING AND EVALUATION.—

10 (1) ANNUAL REPORT.—Each grant recipient
11 shall submit an annual report to the Office that de-
12 scribes—

13 (A) the activities undertaken by the grant
14 recipient, including how such activities meet the
15 goals of the Office, the Foundation, and the
16 comprehensive plan described in subsection
17 (d)(3);

18 (B) the geographic areas being served;

19 (C) the number of immigrants in such
20 areas; and

21 (D) the primary languages spoken in such
22 areas.

23 (2) ANNUAL EVALUATION.—The Chief shall
24 conduct an annual evaluation of the grant program
25 established under this section—

1 (A) to assess and improve the effectiveness
2 of such grant program;

3 (B) to assess the future needs of immi-
4 grants and of State and local governments re-
5 lated to immigrants; and

6 (C) to ensure that grantees recipients and
7 subgrantees are acting within the scope and
8 purpose of this subchapter.

9 **SEC. 2539. NATURALIZATION CEREMONIES.**

10 (a) IN GENERAL.—The Chief, in consultation with
11 the Director of the National Park Service, the Archivist
12 of the United States, and other appropriate Federal offi-
13 cials, shall develop and implement a strategy to enhance
14 the public awareness of naturalization ceremonies.

15 (b) VENUES.—In developing the strategy under sub-
16 section (a), the Secretary shall consider the use of out-
17 standing and historic locations as venues for select natu-
18 ralization ceremonies.

19 (c) REPORTING REQUIREMENT.—The Secretary shall
20 annually submit a report to Congress that contains—

21 (1) the content of the strategy developed under
22 subsection (a); and

23 (2) the progress made towards the implementa-
24 tion of such strategy.

1 **CHAPTER 3—FUNDING**

2 **SEC. 2541. AUTHORIZATION OF APPROPRIATIONS.**

3 (a) OFFICE OF CITIZENSHIP AND NEW AMERI-
4 CANS.—In addition to any amounts otherwise made avail-
5 able to the Office, there are authorized to be appropriated
6 to carry out the functions described in section 451(f)(2)
7 of the Homeland Security Act of 2002 (6 U.S.C.
8 271(f)(2)), as amended by section 2511(b)—

9 (1) \$10,000,000 for the 5-year period ending
10 on September 30, 2018; and

11 (2) such sums as may be necessary for fiscal
12 year 2019 and subsequent fiscal years.

13 (b) GRANT PROGRAMS.—There are authorized to be
14 appropriated to implement the grant programs authorized
15 under sections 2537 and 2538, and to implement the
16 strategy under section 2539—

17 (1) \$100,000,000 for the 5-year period ending
18 on September 30, 2018; and

19 (2) such sums as may be necessary for fiscal
20 year 2019 and subsequent fiscal years.

1 **CHAPTER 4—REDUCE BARRIERS TO**
2 **NATURALIZATION**

3 **SEC. 2551. WAIVER OF ENGLISH REQUIREMENT FOR SEN-**
4 **IOR NEW AMERICANS.**

5 Section 312 (8 U.S.C. 1423) is amended by striking
6 subsection (b) and inserting the following:

7 “(b) The requirements under subsection (a) shall not
8 apply to any person who—

9 “(1) is unable to comply with such require-
10 ments because of physical or mental disability, in-
11 cluding developmental or intellectual disability; or

12 “(2) on the date on which the person’s applica-
13 tion for naturalization is filed under section 334—

14 “(A) is older than 65 years of age; and

15 “(B) has been living in the United States
16 for periods totaling at least 5 years after being
17 lawfully admitted for permanent residence.

18 “(c) The requirement under subsection (a)(1) shall
19 not apply to any person who, on the date on which the
20 person’s application for naturalization is filed under sec-
21 tion 334—

22 “(1) is older than 50 years of age and has been
23 living in the United States for periods totaling at
24 least 20 years after being lawfully admitted for per-
25 manent residence;

1 “(2) is older than 55 years of age and has been
2 living in the United States for periods totaling at
3 least 15 years after being lawfully admitted for per-
4 manent residence; or

5 “(3) is older than 60 years of age and has been
6 living in the United States for periods totaling at
7 least 10 years after being lawfully admitted for per-
8 manent residence.

9 “(d) The Secretary of Homeland Security may waive,
10 on a case-by-case basis, the requirement under subsection
11 (a)(2) on behalf of any person who, on the date on which
12 the person’s application for naturalization is filed under
13 section 334—

14 “(1) is older than 60 years of age; and

15 “(2) has been living in the United States for
16 periods totaling at least 10 years after being lawfully
17 admitted for permanent residence.”.

18 **SEC. 2552. FILING OF APPLICATIONS NOT REQUIRING REG-**

19 **ULAR INTERNET ACCESS.**

20 (a) **ELECTRONIC FILING NOT REQUIRED.—**

21 (1) **IN GENERAL.—**The Secretary may not re-
22 quire that an applicant or petitioner for permanent
23 residence or citizenship of the United States use an
24 electronic method to file any application, or access to
25 a customer account.

1 (2) SUNSET DATE.—This subsection shall cease
2 to be effective on October 1, 2020.

3 (b) NOTIFICATION REQUIREMENT.—Beginning on
4 October 1, 2020, the Secretary may not require that an
5 applicant or petitioner for permanent residence or citizen-
6 ship of the United States use an electronic method to file
7 any application, or access to a customer account unless
8 the Secretary notifies the Committee on Homeland Secu-
9 rity and Governmental Affairs of the Senate and the Com-
10 mittee on Homeland Security of the House of Representa-
11 tives of such requirement not later than 30 days before
12 the effective date of such requirement.

13 **TITLE III—INTERIOR**

14 **ENFORCEMENT**

15 **Subtitle A—Employment**

16 **Verification System**

17 **SEC. 3101. UNLAWFUL EMPLOYMENT OF UNAUTHORIZED**
18 **ALIENS.**

19 (a) IN GENERAL.—Section 274A (8 U.S.C. 1324a)
20 is amended to read as follows:

21 **“SEC. 274A. UNLAWFUL EMPLOYMENT OF ALIENS.**

22 **“(a) MAKING EMPLOYMENT OF UNAUTHORIZED**
23 **ALIENS UNLAWFUL.—**

24 **“(1) IN GENERAL.—It is unlawful for an em-**
25 **ployer—**

1 “(A) to hire, recruit, or refer for a fee an
2 alien for employment in the United States
3 knowing that the alien is an unauthorized alien
4 with respect to such employment; or

5 “(B) to hire, recruit, or refer for a fee for
6 employment in the United States an individual
7 without complying with the requirements under
8 subsections (c) and (d).

9 “(2) CONTINUING EMPLOYMENT.—

10 “(A) PROHIBITION ON CONTINUED EM-
11 PLOYMENT OF UNAUTHORIZED ALIENS.—It is
12 unlawful for an employer, after hiring an alien
13 for employment, to continue to employ the alien
14 in the United States knowing that the alien is
15 (or has become) an unauthorized alien with re-
16 spect to such employment.

17 “(B) PROHIBITION ON CONSIDERATION OF
18 PREVIOUS UNAUTHORIZED STATUS.—Nothing
19 in this section may be construed to prohibit the
20 employment of an individual who is authorized
21 for employment in the United States if such in-
22 dividual was previously an unauthorized alien.

23 “(3) USE OF LABOR THROUGH CONTRACT.—

24 For purposes of this section, any employer that uses
25 a contract, subcontract, or exchange to obtain the

1 labor of an alien in the United States while knowing
2 that the alien is an unauthorized alien with respect
3 to performing such labor shall be considered to have
4 hired the alien for employment in the United States
5 in violation of paragraph (1)(A).

6 “(4) USE OF STATE EMPLOYMENT AGENCY
7 DOCUMENTATION.—For purposes of paragraphs
8 (1)(B), (5), and (6), an employer shall be deemed to
9 have complied with the requirements under sub-
10 section (c) with respect to the hiring of an individual
11 who was referred for such employment by a State
12 employment agency (as defined by the Secretary) if
13 the employer has and retains (for the period and in
14 the manner described in subsection (c)(3)) appro-
15 priate documentation of such referral by such agen-
16 cy, certifying that such agency has complied with the
17 procedures described in subsection (c) with respect
18 to the individual’s referral. An employer that relies
19 on a State agency’s certification of compliance with
20 subsection (c) under this paragraph may utilize and
21 retain the State agency’s certification of compliance
22 with the procedures described in subsection (d), if
23 any, in the manner provided under this paragraph.

24 “(5) GOOD FAITH DEFENSE.—

1 “(A) DEFENSE.—An employer, person, or
2 entity that hires, employs, recruits, or refers in-
3 dividuals for employment in the United States,
4 or is otherwise obligated to comply with the re-
5 quirements under this section and establishes
6 good faith compliance with the requirements
7 under paragraphs (1) through (4) of subsection
8 (c) and subsection (d)—

9 “(i) has established an affirmative de-
10 fense that the employer, person, or entity
11 has not violated paragraph (1)(A) with re-
12 spect to hiring and employing; and

13 “(ii) has established compliance with
14 its obligations under subparagraph (A) and
15 (B) of paragraph (1) and subsection (c)
16 unless the Secretary demonstrates that the
17 employer had knowledge that an individ-
18 uals hired, employed, recruited, or referred
19 by the employer, person, or entity is an un-
20 authorized alien.

21 “(B) EXCEPTION FOR CERTAIN EMPLOY-
22 ERS.—An employer who is not required to par-
23 ticipate in the System or who is participating in
24 the System on a voluntary basis pursuant to
25 subsection (d)(2)(J) has established an affirma-

1 tive defense under subparagraph (A) and need
2 not demonstrate compliance with the require-
3 ments under subsection (d).

4 “(6) GOOD FAITH COMPLIANCE.—

5 “(A) IN GENERAL.—Except as otherwise
6 provided in this subsection, an employer, per-
7 son, or entity is considered to have complied
8 with a requirement under this subsection not-
9 withstanding a technical or procedural failure
10 to meet such requirement if there was a good
11 faith attempt to comply with the requirement.

12 “(B) EXCEPTION IF FAILURE TO CORRECT
13 AFTER NOTICE.—Subparagraph (A) shall not
14 apply if—

15 “(i) the failure is not de minimis;

16 “(ii) the Secretary of Homeland Secu-
17 rity has explained to the employer, person,
18 or entity the basis for the failure and why
19 it is not de minimis;

20 “(iii) the employer, person, or entity
21 has been provided a period of not less than
22 30 days (beginning after the date of the
23 explanation) to correct the failure; and

1 “(iv) the employer, person, or entity
2 has not corrected the failure voluntarily
3 within such period.

4 “(C) EXCEPTION FOR PATTERN OR PRAC-
5 TICE VIOLATORS.—Subparagraph (A) shall not
6 apply to an employer, person, or entity that has
7 engaged or is engaging in a pattern or practice
8 of violations of paragraph (1)(A) or (2).

9 “(7) PRESUMPTION.—After the date on which
10 an employer is required to participate in the System
11 under subsection (d), the employer is presumed to
12 have acted with knowledge for purposes of para-
13 graph (1)(A) if the employer hires, employs, re-
14 cruits, or refers an employee for a fee and fails to
15 make an inquiry to verify the employment authoriza-
16 tion status of the employee through the System.

17 “(8) CONTINUED APPLICATION OF WORKFORCE
18 AND LABOR PROTECTION REMEDIES DESPITE UNAU-
19 THORIZED EMPLOYMENT.—

20 “(A) IN GENERAL.—Subject only to sub-
21 paragraph (B), all rights and remedies provided
22 under any Federal, State, or local law relating
23 to workplace rights, including but not limited to
24 back pay, are available to an employee de-
25 spite—

1 “(i) the employee’s status as an unau-
2 thorized alien during or after the period of
3 employment; or

4 “(ii) the employer’s or employee’s fail-
5 ure to comply with the requirements of
6 this section.

7 “(B) REINSTATEMENT.—Reinstatement
8 shall be available to individuals who—

9 “(i) are authorized to work in the
10 United States at the time such relief is or-
11 dered or effectuated; or

12 “(ii) lost employment-authorized sta-
13 tus due to the unlawful acts of the em-
14 ployer under this section.

15 “(9) AVAILABILITY OF REINSTATEMENT AND
16 RELIEF.—Reinstatement and all other appropriate
17 relief shall be available to individuals who—

18 “(A) are lawfully present in the United
19 States at the time such relief is requested; and

20 “(B) lost employment authorized status
21 due to the unlawful acts of the employer and
22 for whom reinstatement would restore such sta-
23 tus.

24 “(b) DEFINITIONS.—In this section:

1 “(1) COMMISSIONER.—The term ‘Commis-
2 sioner’ means the Commissioner of Social Security.

3 “(2) DEPARTMENT.—Except as otherwise pro-
4 vided, the term ‘Department’ means the Department
5 of Homeland Security.

6 “(3) EMPLOYER.—The term ‘employer’ means
7 any person or entity, including an agency or depart-
8 ment of a Federal, State, or local government, an
9 agent, or a System service provider acting on behalf
10 of an employer, that hires, employs, recruits, or re-
11 fers for a fee an individual for employment in the
12 United States that is not casual, sporadic, irregular,
13 or intermittent (as defined by the Secretary).

14 “(4) EMPLOYMENT AUTHORIZED STATUS.—The
15 term ‘employment authorized status’ means, with re-
16 spect to an individual, that the individual is author-
17 ized to be employed in the United States under the
18 immigration laws of the United States.

19 “(5) SECRETARY.—Except as otherwise specifi-
20 cally provided, the term ‘Secretary’ means the Sec-
21 retary of Homeland Security.

22 “(6) SYSTEM.—The term ‘System’ means the
23 Employment Verification System established under
24 subsection (d).

1 “(7) UNAUTHORIZED ALIEN.—The term ‘unau-
2 thorized alien’ means an alien who, with respect to
3 employment in the United States at a particular
4 time—

5 “(A) is not lawfully admitted for perma-
6 nent residence; or

7 “(B) is not authorized to be employed
8 under this Act or by the Secretary.

9 “(8) WORKPLACE RIGHTS.—The term ‘work-
10 place rights’ means rights guaranteed under Fed-
11 eral, State, or local labor or employment laws, in-
12 cluding laws concerning wages and hours, benefits
13 and employment standards, labor relations, work-
14 place health and safety, work-related injuries, non-
15 discrimination, and retaliation for exercising rights
16 under such laws.

17 “(c) DOCUMENT VERIFICATION REQUIREMENTS.—
18 Any employer hiring an individual for employment in the
19 United States shall comply with the following require-
20 ments and the requirements under subsection (d) to verify
21 that the individual has employment authorized status:

22 “(1) ATTESTATION AFTER EXAMINATION OF
23 DOCUMENTATION.—

24 “(A) IN GENERAL.—

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1 “(i) EXAMINATION BY EMPLOYER.—

2 An employer shall attest, under penalty of
3 perjury on a form prescribed by the Sec-
4 retary, that the employer has verified the
5 identity and employment authorization sta-
6 tus of the individual—

7 “(I) by examining—

8 “(aa) a document specified
9 in subparagraph (C); or

10 “(bb) a document specified
11 in subparagraph (D) and a docu-
12 ment specified in subparagraph
13 (E); and

14 “(II) by utilizing an identity au-
15 thentication mechanism described in
16 clause (iii) or (iv) of subparagraph
17 (F).

18 “(ii) PUBLICATION OF DOCUMENTS.—

19 The Secretary shall publish a picture of
20 each document specified in subparagraphs
21 (C) and (E) on the U.S. Citizenship and
22 Immigration Services’ website.

23 “(B) REQUIREMENTS.—

24 “(i) FORM.—The form referred to in
25 subparagraph (A)(i)—

1 “(I) shall be prescribed by the
2 Secretary not later than 6 months
3 after the date of the enactment of the
4 Border Security, Economic Oppor-
5 tunity, and Immigration Moderniza-
6 tion Act;

7 “(II) shall be available as—

8 “(aa) a paper form;

9 “(bb) a form that may be
10 completed by an employer via
11 telephone or video conference;

12 “(cc) an electronic form; or

13 “(dd) a form that is inte-
14 grated electronically with the re-
15 quirements under subsection (d).

16 “(ii) ATTESTATION.—Each such form
17 shall require the employer to sign an attes-
18 tation with a handwritten, electronic, or
19 digital pin code signature, according to
20 standards prescribed by the Secretary.

21 “(iii) COMPLIANCE.—An employer has
22 complied with the requirements under this
23 paragraph with respect to examination of
24 the documents included in subclauses (I)
25 and (II) of subparagraph (A)(i) if—

1 “(I) the employer has, in good
2 faith, followed applicable regulations
3 and any written procedures or instruc-
4 tions provided by the Secretary; and

5 “(II) a reasonable person would
6 conclude that the documentation is
7 genuine and relates to the individual
8 presenting such documentation.

9 “(C) DOCUMENTS ESTABLISHING IDEN-
10 TITY AND EMPLOYMENT AUTHORIZED STA-
11 TUS.—A document is specified in this subpara-
12 graph if the document is unexpired (unless the
13 validity of the document is extended by law)
14 and is 1 of the following:

15 “(i) A United States passport or pass-
16 port card issued to an individual pursuant
17 to the Secretary of State’s authority under
18 the Act entitled ‘An Act to regulate the
19 issue and validity of passports, and for
20 other purposes’, approved July 3, 1926 (22
21 U.S.C. 211a).

22 “(ii) A document issued to an alien
23 evidencing that the alien is lawfully admit-
24 ted for permanent residence or another
25 document issued to an individual evidenc-

1 ing the individual's employment authorized
2 status, as designated by the Secretary, if
3 the document—

4 “(I) contains a photograph of the
5 individual, or such other personal
6 identifying information relating to the
7 individual as the Secretary deter-
8 mines, by regulation, to be sufficient
9 for the purposes of this subparagraph;

10 “(II) is evidence of employment
11 authorized status; and

12 “(III) contains security features
13 to make the document resistant to
14 tampering, counterfeiting, and fraudu-
15 lent use.

16 “(iii) An enhanced driver's license or
17 identification card issued to a national of
18 the United States by a State, an outlying
19 possession of the United States, or a feder-
20 ally recognized Indian tribe that—

21 “(I) meets the requirements
22 under section 202 of the REAL ID
23 Act of 2005 (division B of Public Law
24 109–13; 49 U.S.C. 30301 note); and

1 “(II) the Secretary has certified
2 by notice published in the Federal
3 Register and through appropriate no-
4 tice directly to employers registered in
5 the System 3 months prior to publica-
6 tion that such enhanced license or
7 card is suitable for use under this
8 subparagraph based upon the accu-
9 racy and security of the issuance proc-
10 ess, security features on the docu-
11 ment, and such other factors as the
12 Secretary may prescribe.

13 “(iv) A passport issued by the appro-
14 priate authority of a foreign country ac-
15 companied by a Form I-94 or Form I-
16 94A (or similar successor record), or other
17 documentation as designated by the Sec-
18 retary that specifies the individual’s status
19 in the United States and the duration of
20 such status if the proposed employment is
21 not in conflict with any restriction or limi-
22 tation specified on such form or docu-
23 mentation.

24 “(v) A passport issued by the Fed-
25 erated States of Micronesia or the Repub-

1 lic of the Marshall Islands with evidence of
2 nonimmigrant admission to the United
3 States under the Compact of Free Associa-
4 tion between the United States and the
5 Federated States of Micronesia or the Re-
6 public of the Marshall Islands.

7 “(D) DOCUMENTS ESTABLISHING IDEN-
8 TITY OF INDIVIDUAL.—A document is specified
9 in this subparagraph if the document is unex-
10 pired (unless the validity of the document is ex-
11 tended by law) and is 1 of the following:

12 “(i) A driver’s license or identity card
13 that is not described in subparagraph
14 (C)(iii) and is issued to an individual by a
15 State or an outlying possession of the
16 United States, a federally recognized In-
17 dian tribe, or an agency (including mili-
18 tary) of the Federal Government if the
19 driver’s license or identity card includes, at
20 a minimum—

21 “(I) the individual’s photograph,
22 name, date of birth, gender, and driv-
23 er’s license or identification card num-
24 ber; and

1 “(II) security features to make
2 the license or card resistant to tam-
3 pering, counterfeiting, and fraudulent
4 use.

5 “(ii) A voter registration card.

6 “(iii) A document that complies with
7 the requirements under section 7209(b)(1)
8 of the Intelligence Reform and Terrorism
9 Prevention Act of 2004 (Public Law 108–
10 458; 8 U.S.C. 1185 note).

11 “(iv) For individuals under 18 years
12 of age who are unable to present a docu-
13 ment listed in clause (i) or (ii), documenta-
14 tion of personal identity of such other type
15 as the Secretary determines will provide a
16 reliable means of identification, which may
17 include an attestation as to the individual’s
18 identity by a person 21 years of age or
19 older under penalty of perjury.

20 “(E) DOCUMENTS EVIDENCING EMPLOY-
21 MENT AUTHORIZATION.—A document is speci-
22 fied in this subparagraph if the document is un-
23 expired (unless the validity of the document is
24 extended by law) and is 1 of the following:

1 “(i) A social security account number
2 card issued by the Commissioner, other
3 than a card which specifies on its face that
4 the card is not valid to evidence employ-
5 ment authorized status or has other simi-
6 lar words of limitation.

7 “(ii) Any other documentation evi-
8 dencing employment authorized status that
9 the Secretary determines and publishes in
10 the Federal Register and through appro-
11 priate notice directly to employers reg-
12 istered within the System to be acceptable
13 for purposes of this subparagraph if such
14 documentation, including any electronic se-
15 curity measures linked to such documenta-
16 tion, contains security features to make
17 such documentation resistant to tam-
18 pering, counterfeiting, and fraudulent use.

19 “(F) IDENTITY AUTHENTICATION MECHA-
20 NISM.—

21 “(i) DEFINITIONS.—In this subpara-
22 graph:

23 “(I) COVERED IDENTITY DOCU-
24 MENT.—The term ‘covered identity
25 document’ means a valid—

1 “(aa) United States pass-
2 port, passport card, or a docu-
3 ment evidencing lawful perma-
4 nent residence status or employ-
5 ment authorized status issued to
6 an alien;

7 “(bb) enhanced driver’s li-
8 cense or identity card issued by a
9 participating State or an outlying
10 possession of the United States;
11 or

12 “(cc) photograph and appro-
13 priate identifying information
14 provided by the Secretary of
15 State pursuant to the granting of
16 a visa.

17 “(II) PARTICIPATING STATE.—
18 The term ‘participating State’ means
19 a State that has an agreement with
20 the Secretary to provide the Sec-
21 retary, for purposes of identity
22 verification in the System, with photo-
23 graphs and appropriate identifying in-
24 formation maintained by the State.

1 “(ii) REQUIREMENT FOR IDENTITY
2 AUTHENTICATION.—In addition to
3 verifying the documents specified in sub-
4 paragraph (C), (D), or (E) and utilizing
5 the System under subsection (d), each em-
6 ployer shall use an identity authentication
7 mechanism described in clause (iii) or pro-
8 vided in clause (iv) after it becomes avail-
9 able to verify the identity of each indi-
10 vidual the employer seeks to hire.

11 “(iii) PHOTO TOOL.—

12 “(I) USE REQUIREMENT.—An
13 employer seeking hiring an individual
14 who has a covered identity document
15 shall verify the identity of such indi-
16 vidual using the photo tool described
17 in subclause (II).

18 “(II) DEVELOPMENT REQUIRE-
19 MENT.—The Secretary shall develop
20 and maintain a photo tool that en-
21 ables employers to match the photo on
22 a covered identity document provided
23 to the employer to a photo maintained
24 by a U.S. Citizenship and Immigra-
25 tion Services database.

1 “(iv) ADDITIONAL SECURITY MEAS-
2 URES.—

3 “(I) USE REQUIREMENT.—An
4 employer seeking to hire an individual
5 whose identity may not be verified
6 using the photo tool described in
7 clause (iii) shall verify the identity of
8 such individual using the additional
9 security measures described in sub-
10 clause (II).

11 “(II) DEVELOPMENT REQUIRE-
12 MENT.—The Secretary shall develop,
13 after publication in the Federal Reg-
14 ister and an opportunity for public
15 comment, specific and effective addi-
16 tional security measures to adequately
17 verify the identity of an individual
18 whose identity may not be verified
19 using the photo tool described in
20 clause (iii). Such additional security
21 measures—

22 “(aa) shall be kept up-to-
23 date with technological advances;
24 and

1 “(bb) shall provide a means
2 of identity authentication in a
3 manner that provides a high level
4 of certainty as to the identity of
5 such individual, using immigra-
6 tion and identifying information
7 that may include review of iden-
8 tity documents or background
9 screening verification techniques
10 using publicly available informa-
11 tion.

12 “(G) AUTHORITY TO PROHIBIT USE OF
13 CERTAIN DOCUMENTS.—If the Secretary deter-
14 mines, after publication in the Federal Register
15 and an opportunity for public comment, that any
16 document or class of documents specified in
17 subparagraph (B), (C), or (D) does not reliably
18 establish identity or that employment author-
19 ized status is being used fraudulently to an un-
20 acceptable degree, the Secretary—

21 “(i) may prohibit or restrict the use of
22 such document or class of documents for
23 purposes of this subsection; and

1 “(ii) shall directly notify all employers
2 registered within the System of the prohi-
3 bition through appropriate means.

4 “(H) AUTHORITY TO ALLOW USE OF CER-
5 TAIN DOCUMENTS.—If the Secretary has deter-
6 mined that another document or class of docu-
7 ments, such as a document issued by a federally
8 recognized Indian tribe, may be used to reliably
9 establish identity or employment authorized sta-
10 tus, the Secretary—

11 “(i) may allow the use of that docu-
12 ment or class of documents for purposes of
13 this subsection after publication in the
14 Federal Register and an opportunity for
15 public comment;

16 “(ii) shall publish a description of any
17 such document or class of documents on
18 the U.S. Citizenship and Immigration
19 Services’ website; and

20 “(iii) shall directly notify all employ-
21 ers registered within the System of the ad-
22 dition through appropriate means.

23 “(2) INDIVIDUAL ATTESTATION OF EMPLOY-
24 MENT AUTHORIZATION.—An individual, upon com-
25 mencing employment with an employer, shall—

1 “(A) attest, under penalty of perjury, on
2 the form prescribed by the Secretary, that the
3 individual is—

4 “(i) a citizen of the United States;

5 “(ii) an alien lawfully admitted for
6 permanent residence;

7 “(iii) an alien who has employment
8 authorized status; or

9 “(iv) otherwise authorized by the Sec-
10 retary to be hired for such employment;

11 “(B) provide such attestation by a hand-
12 written, electronic, or digital pin code signature;
13 and

14 “(C) provide the individual’s social security
15 account number to the Secretary, unless the in-
16 dividual has not yet been issued such a number,
17 on such form as the Secretary may require.

18 “(3) RETENTION OF VERIFICATION RECORD.—

19 “(A) IN GENERAL.—After completing a
20 form for an individual in accordance with para-
21 graphs (1) and (2), the employer shall retain a
22 version of such completed form and make such
23 form available for inspection by the Secretary
24 or the Office of Special Counsel for Immigra-
25 tion-Related Unfair Employment Practices of

1 the Department of Justice during the period be-
2 ginning on the hiring date of the individual and
3 ending on the later of—

4 “(i) the date that is 3 years after such
5 hiring date; or

6 “(ii) the date that is 1 year after the
7 date on which the individual’s employment
8 with the employer is terminated.

9 “(B) REQUIREMENT FOR ELECTRONIC RE-
10 TENTION.—The Secretary—

11 “(i) shall permit an employer to retain
12 the form described in subparagraph (A) in
13 electronic form; and

14 “(ii) shall permit an employer to re-
15 tain such form in paper, microfiche, micro-
16 film, portable document format, or other
17 media.

18 “(4) COPYING OF DOCUMENTATION AND REC-
19 ORDKEEPING.—The Secretary may promulgate regu-
20 lations regarding—

21 “(A) copying documents and related infor-
22 mation pertaining to employment verification
23 presented by an individual under this sub-
24 section; and

1 “(B) retaining such information during a
2 period not to exceed the required retention pe-
3 riod set forth in paragraph (3).

4 “(5) PENALTIES.—An employer that fails to
5 comply with any requirement under this subsection
6 may be penalized under subsection (e)(4)(B).

7 “(6) PROTECTION OF CIVIL RIGHTS.—

8 “(A) IN GENERAL.—Nothing in this sec-
9 tion may be construed to diminish any rights
10 otherwise protected by Federal law.

11 “(B) PROHIBITION ON DISCRIMINATION.—
12 An employer shall use the procedures for docu-
13 ment verification set forth in this paragraph for
14 all employees without regard to race, color, reli-
15 gion, sex, national origin, or, unless specifically
16 permitted in this section, to citizenship status.

17 “(7) RECEIPTS.—The Secretary may authorize
18 the use of receipts for replacement documents, and
19 temporary evidence of employment authorization by
20 an individual to meet a documentation requirement
21 under this subsection on a temporary basis not to
22 exceed 1 year, after which time the individual shall
23 provide documentation sufficient to satisfy the docu-
24 mentation requirements under this subsection.

1 “(8) NO AUTHORIZATION OF NATIONAL IDENTI-
2 FICATION CARDS.—Nothing in this section may be
3 construed to directly or indirectly authorize the
4 issuance, use, or establishment of a national identi-
5 fication card.

6 “(d) EMPLOYMENT VERIFICATION SYSTEM.—

7 “(1) IN GENERAL.—

8 “(A) ESTABLISHMENT.—The Secretary, in
9 consultation with the Commissioner, shall es-
10 tablish the Employment Verification System.

11 “(B) MONITORING.—The Secretary shall
12 create the necessary processes to monitor—

13 “(i) the functioning of the System, in-
14 cluding the volume of the workflow, the
15 speed of processing of queries, the speed
16 and accuracy of responses;

17 “(ii) the misuse of the System, includ-
18 ing the prevention of fraud or identity
19 theft;

20 “(iii) whether the use of the System
21 results in wrongful adverse actions or dis-
22 crimination based upon a prohibited factor
23 against citizens or nationals of the United
24 States or individuals who have employment
25 authorized status; and

1 “(iv) the security, integrity, and pri-
2 vacy of the System.

3 “(C) PROCEDURES.—The Secretary—

4 “(i) shall create processes to provide
5 an individual with direct access to the indi-
6 vidual’s case history in the System, includ-
7 ing—

8 “(I) the identities of all persons
9 or entities that have queried the indi-
10 vidual through the System;

11 “(II) the date of each such
12 query; and

13 “(III) the System response for
14 each such query; and

15 “(ii) in consultation with the Commis-
16 sioner, may develop—

17 “(I) protocols to notify an indi-
18 vidual, in a timely manner through
19 the use of electronic correspondence
20 or mail, that a query for the indi-
21 vidual has been processed through the
22 System; or

23 “(II) a process for the individual
24 to submit additional queries to the

1 System or notify the Secretary of po-
2 tential identity fraud.

3 “(2) PARTICIPATION REQUIREMENTS.—

4 “(A) FEDERAL GOVERNMENT.—Except as
5 provided in subparagraph (B), all agencies and
6 departments in the executive, legislative, or ju-
7 dicial branches of the Federal Government shall
8 participate in the System beginning on the ear-
9 lier of—

10 “(i) the date of the enactment of the
11 Border Security, Economic Opportunity,
12 and Immigration Modernization Act, to the
13 extent required under section 402(e)(1) of
14 the Illegal Immigration Reform and Immig-
15 grant Responsibility Act of 1996 (division
16 C of Public Law 104–208; 8 U.S.C.
17 1324a) and as already implemented by
18 each agency or department; or

19 “(ii) the date that is 90 days after the
20 date of the enactment of the Border Secu-
21 rity, Economic Opportunity, and Immigra-
22 tion Modernization Act.

23 “(B) FEDERAL CONTRACTORS.—Federal
24 contractors shall participate in the System as
25 provided in the final rule relating to employ-

1 ment eligibility verification published in the
2 Federal Register on November 14, 2008 (73
3 Fed. Reg. 67,651), or any similar subsequent
4 regulation, for which purpose references to E-
5 Verify in the final rule shall be construed to
6 apply to the System.

7 “(C) CRITICAL INFRASTRUCTURE.—

8 “(i) IN GENERAL.—Beginning on the
9 date that is 1 year after the date on which
10 regulations are published implementing
11 this subsection, the Secretary may author-
12 ize or direct any employer, person, or enti-
13 ty responsible for granting access to, pro-
14 tecting, securing, operating, administering,
15 or regulating part of the critical infrastruc-
16 ture (as defined in section 1016(e) of the
17 Critical Infrastructure Protection Act of
18 2001 (42 U.S.C. 5195c(e))) to participate
19 in the System to the extent the Secretary
20 determines that such participation will as-
21 sist in the protection of the critical infra-
22 structure.

23 “(ii) NOTIFICATION TO EMPLOY-
24 ERS.—The Secretary shall notify an em-
25 ployer required to participate in the Sys-

1 tem under this subparagraph not later
2 than 90 days before the date on which the
3 employer is required to participate.

4 “(D) EMPLOYERS WITH MORE THAN 5,000
5 EMPLOYEES.—Not later than 2 years after reg-
6 ulations are published implementing this sub-
7 section, all employers with more than 5,000 em-
8 ployees shall participate in the System with re-
9 spect to all newly hired employees and employ-
10 ees with expiring temporary employment au-
11 thorization documents.

12 “(E) EMPLOYERS WITH MORE THAN 500
13 EMPLOYEES.—Not later than 3 years after reg-
14 ulations are published implementing this sub-
15 section, all employers with more than 500 em-
16 ployees shall participate in the System with re-
17 spect to all newly hired employees and employ-
18 ees with expiring temporary employment au-
19 thorization documents.

20 “(F) AGRICULTURAL EMPLOYMENT.—Not
21 later than 4 years after regulations are pub-
22 lished implementing this subsection, employers
23 of employees performing agricultural employ-
24 ment (as defined in section 218A of this Act
25 and section 2202 of the Border Security, Eco-

1 nomic Opportunity, and Immigration Mod-
2 ernization Act) shall participate in the System
3 with respect to all newly hired employees and
4 employees with expiring temporary employment
5 authorization documents. An agricultural em-
6 ployee shall not be counted for purposes of sub-
7 paragraph (D) or (E).

8 “(G) ALL EMPLOYERS.—Except as pro-
9 vided in subparagraph (H), not later than 4
10 years after regulations are published imple-
11 menting this subsection, all employers shall par-
12 ticipate in the System with respect to all newly
13 hired employees and employees with expiring
14 temporary employment authorization docu-
15 ments.

16 “(H) TRIBAL GOVERNMENT EMPLOY-
17 ERS.—

18 “(i) RULEMAKING.—In developing
19 regulations to implement this subsection,
20 the Secretary shall—

21 “(I) consider the effects of this
22 section on federally recognized Indian
23 tribes and tribal members; and

1 “(II) consult with the govern-
2 ments of federally recognized Indian
3 tribes.

4 “(ii) REQUIRED PARTICIPATION.—Not
5 later than 5 years after regulations are
6 published implementing this subsection, all
7 employers owned by, or entities of, the gov-
8 ernment of a federally recognized Indian
9 tribe shall participate in the System with
10 respect to all newly hired employees and
11 employees with expiring temporary employ-
12 ment authorization documents.

13 “(I) IMMIGRATION LAW VIOLATORS.—

14 “(i) ORDERS FINDING VIOLATIONS.—
15 An order finding any employer to have vio-
16 lated this section or section 274C may, in
17 the Secretary’s discretion, require the em-
18 ployer to participate in the System with re-
19 spect to newly hired employees and em-
20 ployees with expiring temporary employ-
21 ment authorization documents, if such em-
22 ployer is not otherwise required to partici-
23 pate in the System under this section. The
24 Secretary shall monitor such employer’s
25 compliance with System procedures.

1 “(ii) PATTERN OR PRACTICE OF VIO-
2 LATIONS.—The Secretary may require an
3 employer that is required to participate in
4 the System with respect to newly hired em-
5 ployees to participate in the System with
6 respect to the employer’s current employ-
7 ees if the employer is determined by the
8 Secretary or other appropriate authority to
9 have engaged in a pattern or practice of
10 violations of the immigration laws of the
11 United States.

12 “(J) VOLUNTARY PARTICIPATION.—The
13 Secretary may permit any employer that is not
14 required to participate in the System under this
15 section to do so on a voluntary basis.

16 “(3) CONSEQUENCE OF FAILURE TO PARTICI-
17 PATE.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), the failure, other than a de
20 minimis or inadvertent failure, of an employer
21 that is required to participate in the System to
22 comply with the requirements of the System
23 with respect to an individual—

1 “(i) shall be treated as a violation of
2 subsection (a)(1)(B) with respect to that
3 individual; and

4 “(ii) creates a rebuttable presumption
5 that the employer has violated paragraph
6 (1)(A) or (2) of subsection (a).

7 “(B) EXCEPTION.—

8 “(i) IN GENERAL.—Subparagraph (A)
9 shall not apply in a criminal prosecution.

10 “(ii) USE AS EVIDENCE.—Nothing in
11 this paragraph may be construed to limit
12 the use in the prosecution of a Federal
13 crime, in a manner otherwise consistent
14 with Federal criminal law and procedure,
15 of evidence relating to the employer’s fail-
16 ure to comply with requirements of the
17 System.

18 “(4) PROCEDURES FOR PARTICIPANTS IN THE
19 SYSTEM.—

20 “(A) IN GENERAL.—An employer partici-
21 pating in the System shall register such partici-
22 pation with the Secretary and, when hiring any
23 individual for employment in the United States,
24 shall comply with the following:

1 “(i) REGISTRATION OF EMPLOYERS.—

2 The Secretary, through notice in the Fed-
3 eral Register, shall prescribe procedures
4 that employers shall be required to follow
5 to register with the System.

6 “(ii) UPDATING INFORMATION.—The
7 employer is responsible for providing notice
8 of any change to the information required
9 under subclauses (I), (II), and (III) of
10 clause (v) before conducting any further
11 inquiries within the System, or on such
12 other schedule as the Secretary may pre-
13 scribe.

14 “(iii) TRAINING.—The Secretary shall
15 require employers to undergo such training
16 as the Secretary determines to be nec-
17 essary to ensure proper use, protection of
18 civil rights and civil liberties, privacy, in-
19 tegrity, and security of the System. To the
20 extent practicable, such training shall be
21 made available electronically on the U.S.
22 Citizenship and Immigration Services’
23 website.

24 “(iv) NOTIFICATION TO EMPLOY-
25 EES.—The employer shall inform individ-

1 uals hired for employment that the Sys-
2 tem—

3 “(I) will be used by the employer;

4 “(II) may be used for immigra-
5 tion enforcement purposes; and

6 “(III) may not be used to dis-
7 criminate or to take adverse action
8 against a national of the United
9 States or an alien who has employ-
10 ment authorized status.

11 “(v) PROVISION OF ADDITIONAL IN-
12 FORMATION.—The employer shall obtain
13 from the individual (and the individual
14 shall provide) and shall record in such
15 manner as the Secretary may specify—

16 “(I) the individual’s social secu-
17 rity account number;

18 “(II) if the individual does not
19 attest to United States citizenship or
20 status as a national of the United
21 States under subsection (c)(2), such
22 identification or authorization number
23 established by the Department as the
24 Secretary shall specify; and

1 “(III) such other information as
2 the Secretary may require to deter-
3 mine the identity and employment au-
4 thorization of an individual.

5 “(vi) PRESENTATION OF DOCUMENTA-
6 TION.—The employer, and the individual
7 whose identity and employment authorized
8 status are being confirmed, shall fulfill the
9 requirements under subsection (c).

10 “(B) SEEKING CONFIRMATION.—

“(i) IN GENERAL.—An employer shall use the System to confirm the identity and employment authorized status of any individual during—

15 “(I) the period beginning on the
16 date on which the individual accepts
17 an offer of employment and ending 3
18 business days after the date on which
19 employment begins; or

20 “(II) such other reasonable pe-
21 riod as the Secretary may prescribe.

“(ii) LIMITATION.—An employer may not make the starting date of an individual’s employment or training or any other term and condition of employment depend-

ent on the receipt of a confirmation of identity and employment authorized status by the System.

“(iii) REVERIFICATION.—If an individual has a limited period of employment authorized status, the individual’s employer shall reverify such status through the System not later than 3 business days after the last day of such period.

“(iv) OTHER EMPLOYMENT.—For employers directed by the Secretary to participate in the System under paragraph (2)(C)(i) to protect critical infrastructure or otherwise specified circumstances in this section to verify their entire workforce, the System may be used for initial verification of an individual who was hired before the employer became subject to the System, and the employer shall initiate all required procedures on or before such date as the Secretary shall specify.

“(v) NOTIFICATION.—

“(I) IN GENERAL.—The Secretary shall provide, and the employer shall utilize, as part of the System, a

1 method of notifying employers of a
2 confirmation or nonconfirmation of an
3 individual's identity and employment
4 authorized status, or a notice that
5 further action is required to verify
6 such identity or employment eligibility
7 (referred to in this subsection as a
8 'further action notice').

9 “(II) PROCEDURES.—The Sec-
10 retary shall establish procedures—

11 “(aa) to directly notify the
12 individual and the employer of a
13 confirmation, nonconfirmation, or
14 further action notice; and

15 “(bb) to provide information
16 about filing an administrative ap-
17 peal under paragraph (6) and a
18 filing for review before an admin-
19 istrative law judge under para-
20 graph (7).

21 “(III) IMPLEMENTATION.—The
22 Secretary may provide for a phased-in
23 implementation of the notification re-
24 quirements under this clause, as ap-
25 propriate. The notification system

1 shall cover all inquiries not later than
2 1 year from the date of the enactment
3 of the Border Security, Economic Op-
4 portunity, and Immigration Mod-
5 ernization Act.

6 “(C) CONFIRMATION OR NONCONFIRMA-
7 TION.—

8 “(i) INITIAL RESPONSE.—

9 “(I) IN GENERAL.—Except as
10 provided in subclause (II), the System
11 shall provide—

12 “(aa) a confirmation of an
13 individual’s identity and employ-
14 ment authorized status or a fur-
15 ther action notice at the time of
16 the inquiry; and

17 “(bb) an appropriate code
18 indicating such confirmation or
19 such further action notice.

20 “(II) ALTERNATIVE DEAD-
21 LINE.—If the System is unable to
22 provide immediate confirmation or
23 further action notice for technological
24 reasons or due to unforeseen cir-
25 cumstances, the System shall provide

1 a confirmation or further action notice
2 not later than 3 business days after
3 the initial inquiry.

4 “(ii) CONFIRMATION UPON INITIAL
5 INQUIRY.—If the employer receives an ap-
6 propriate confirmation of an individual’s
7 identity and employment authorized status
8 under the System, the employer shall
9 record the confirmation in such manner as
10 the Secretary may specify.

11 “(iii) FURTHER ACTION NOTICE AND
12 LATER CONFIRMATION OR NONCONFIRMA-
13 TION.—

14 “(I) NOTIFICATION AND AC-
15 KNOWLEDGMENT THAT FURTHER AC-
16 TION IS REQUIRED.—Not later than 3
17 business days after an employer re-
18 ceives a further action notice of an in-
19 dividual’s identity or employment eli-
20 gibility under the System, or during
21 such other reasonable time as the Sec-
22 retary may prescribe, the employer
23 shall notify the individual for whom
24 the confirmation is sought of the fur-
25 ther action notice and any procedures

1 specified by the Secretary for address-
2 ing such notice. The further action
3 notice shall be given to the individual
4 in writing and the employer shall ac-
5 knowledge in the System under pen-
6 alty of perjury that it provided the
7 employee with the further action no-
8 tice. The individual shall affirmatively
9 acknowledge in writing, or in such
10 other manner as the Secretary may
11 specify, the receipt of the further ac-
12 tion notice from the employer. If the
13 individual refuses to acknowledge the
14 receipt of the further action notice, or
15 acknowledges in writing that the indi-
16 vidual will not contest the further ac-
17 tion notice under subclause (II), the
18 employer shall notify the Secretary in
19 such manner as the Secretary may
20 specify.

21 “(II) CONTEST.—Not later than
22 10 business days after receiving noti-
23 fication of a further action notice
24 under subclause (I), the individual
25 shall contact the appropriate Federal

1 agency and, if the Secretary so re-
2 quires, appear in person for purposes
3 of verifying the individual's identity
4 and employment eligibility. The Sec-
5 retary, in consultation with the Com-
6 missioner and other appropriate Fed-
7 eral agencies, shall specify an avail-
8 able secondary verification procedure
9 to confirm the validity of information
10 provided and to provide a confirma-
11 tion or nonconfirmation. Any proce-
12 dures for reexamination shall not limit
13 in any way an employee's right to ap-
14 peal a nonconfirmation.

15 “(III) NO CONTEST.—If the indi-
16 vidual refuses to acknowledge receipt
17 of the further action notice, acknowl-
18 edges that the individual will not con-
19 test the further action notice as pro-
20 vided in subclause (I), or does not
21 contact the appropriate Federal agen-
22 cy within the period specified in sub-
23 clause (II), following expiration of the
24 period specified in subclause (II), a
25 nonconfirmation shall be issued. The

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1 employer shall record the noncon-
2 firmation in such manner as the Sec-
3 retary may specify and terminate the
4 individual's employment. An individ-
5 ual's failure to contest a further ac-
6 tion notice shall not be considered an
7 admission of guilt with respect to any
8 violation of this section or any provi-
9 sion of law.

10 “(IV) CONFIRMATION OR NON-
11 CONFIRMATION.—Unless the period is
12 extended in accordance with this sub-
13 clause, the System shall provide a
14 confirmation or nonconfirmation not
15 later than 10 business days after the
16 date on which the individual contests
17 the further action notice under sub-
18 clause (II). If the Secretary deter-
19 mines that good cause exists, after
20 taking into account adverse impacts
21 to the employer, and including time to
22 permit the individual to obtain and
23 provide needed evidence of identity or
24 employment eligibility, the Secretary
25 shall extend the period for providing

1 confirmation or nonconfirmation for
2 stated periods beyond 10 business
3 days. When confirmation or noncon-
4 firmation is provided, the confirma-
5 tion system shall provide an appro-
6 priate code indicating such confirma-
7 tion or nonconfirmation.

8 “(V) REEXAMINATION.—Nothing
9 in this section shall prevent the Sec-
10 retary from establishing procedures to
11 reexamine a case where a confirma-
12 tion or nonconfirmation has been pro-
13 vided if subsequently received infor-
14 mation indicates that the confirmation
15 or nonconfirmation may not have been
16 correct. Any procedures for reexam-
17 ination shall not limit in any way an
18 employee’s right to appeal a noncon-
19 firmation.

20 “(VI) EMPLOYEE PROTEC-
21 TIONS.—An employer may not termi-
22 nate employment or take any other
23 adverse action against an individual
24 solely because of a failure of the indi-
25 vidual to have identity and employ-

1 ment eligibility confirmed under this
2 subsection until—

3 “(aa) a nonconfirmation has
4 been issued;

5 “(bb) if the further action
6 notice was contested, the period
7 to timely file an administrative
8 appeal has expired without an
9 appeal or the contest to the fur-
10 ther action notice is withdrawn;
11 or

12 “(cc) if an appeal before an
13 administrative law judge under
14 paragraph (7) has been filed, the
15 nonconfirmation has been upheld
16 or the appeal has been withdrawn
17 or dismissed.

18 “(iv) NOTICE OF NONCONFIRMA-
19 TION.—Not later than 3 business days
20 after an employer receives a nonconfirma-
21 tion, or during such other reasonable time
22 as the Secretary may provide, the employer
23 shall notify the individual who is the sub-
24 ject of the nonconfirmation, and provide
25 information about filing an administrative

1 appeal pursuant to paragraph (6) and re-
2 quest for a hearing before an administra-
3 tive law judge pursuant to paragraph (7).
4 The nonconfirmation notice shall be given
5 to the individual in writing and the em-
6 ployer shall acknowledge in the System
7 under penalty of perjury that it provided
8 the notice (or adequately attempted to pro-
9 vide notice, but was unable to do so despite
10 reasonable efforts). The individual shall af-
11 firmatively acknowledge in writing, or in
12 such other manner as the Secretary may
13 prescribe, the receipt of the nonconfirma-
14 tion notice from the employer. If the indi-
15 vidual refuses or fails to acknowledge the
16 receipt of the nonconfirmation notice, the
17 employer shall notify the Secretary in such
18 manner as the Secretary may prescribe.

19 “(D) CONSEQUENCES OF NONCONFIRMA-
20 TION.—

21 “(i) TERMINATION OF CONTINUED
22 EMPLOYMENT.—Except as provided in
23 clause (iii), an employer that has received
24 a nonconfirmation regarding an individual
25 and has made reasonable efforts to notify

1 the individual in accordance with subpara-
2 graph (C)(iv) shall terminate the employ-
3 ment of the individual upon the expiration
4 of the time period specified in paragraph
5 (7).

6 “(ii) CONTINUED EMPLOYMENT
7 AFTER NONCONFIRMATION.—If the em-
8 ployer continues to employ an individual
9 after receiving nonconfirmation and ex-
10 haustion of all appeals or expiration of all
11 rights to appeal if not appealed, in viola-
12 tion of clause (i), a rebuttable presumption
13 is created that the employer has violated
14 paragraphs (1)(A) and (2) of subsection
15 (a). Such presumption shall not apply in
16 any prosecution under subsection (k)(1).

17 “(iii) EFFECT OF ADMINISTRATIVE
18 APPEAL OR REVIEW BY ADMINISTRATIVE
19 LAW JUDGE.—If an individual files an ad-
20 ministrative appeal of the nonconfirmation
21 within the time period specified in para-
22 graph (6)(A), or files a petition for review
23 by an administrative law judge specified in
24 paragraph (7)(A), the employer shall not
25 terminate the individual’s employment

1 under this subparagraph prior to the reso-
2 lution of the administrative appeal unless
3 the Secretary or Commissioner terminates
4 the stay under paragraph (6)(B) or (7)(B).

5 “(E) OBLIGATION TO RESPOND TO QUE-
6 RIES AND ADDITIONAL INFORMATION.—

7 “(i) IN GENERAL.—Employers shall
8 comply with requests for information from
9 the Secretary and the Special Counsel for
10 Immigration-Related Unfair Employment
11 Practices of the Department of Justice, in-
12 cluding queries concerning current and
13 former employees, within the time frame
14 during which records are required to be
15 maintained under this section regarding
16 such former employees, if such information
17 relates to the functioning of the System,
18 the accuracy of the responses provided by
19 the System, or any suspected misuse, dis-
20 crimination, fraud, or identity theft in the
21 use of the System. Failure to comply with
22 a request under this clause constitutes a
23 violation of subsection (a)(1)(B).

24 “(ii) ACTION BY INDIVIDUALS.—

1 “(I) IN GENERAL.—Individuals
2 being verified through the System
3 may be required to take further action
4 to address questions identified by the
5 Secretary or the Commissioner re-
6 garding the documents relied upon for
7 purposes of subsection (c).

8 “(II) NOTIFICATION.—Not later
9 than 3 business days after the receipt
10 of such questions regarding an indi-
11 vidual, or during such other reason-
12 able time as the Secretary may pre-
13 scribe, the employer shall—

14 “(aa) notify the individual of
15 any such requirement for further
16 actions; and

17 “(bb) shall record the date
18 and manner of such notification.

19 “(III) ACKNOWLEDGMENT.—The
20 individual shall acknowledge the noti-
21 fication received from the employer
22 under subclause (II) in writing, or in
23 such other manner as the Secretary
24 may prescribe.

25 “(iii) RULEMAKING.—

1 “(I) IN GENERAL.—The Sec-
2 retary, in consultation with the Com-
3 missioner and the Attorney General,
4 is authorized to issue regulations im-
5 plementing, clarifying, and
6 supplementing the requirements under
7 this subparagraph—

8 “(aa) to facilitate the func-
9 tioning, accuracy, and fairness of
10 the System;

11 “(bb) to prevent misuse, dis-
12 crimination, fraud, or identity
13 theft in the use of the System; or

14 “(cc) to protect and main-
15 tain the confidentiality of infor-
16 mation that could be used to lo-
17 cate or otherwise place at risk of
18 harm victims of domestic vio-
19 lence, dating violence, sexual as-
20 sault, stalking, and human traf-
21 ficking, and of the applicant or
22 beneficiary of any petition de-
23 scribed in section 384(a)(2) of
24 the Illegal Immigration Reform
25 and Immigrant Responsibility

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1 Act of 1996 (8 U.S.C.
2 1367(a)(2)).

3 “(II) NOTICE.—The regulations
4 issued under subclause (I)—

5 “(aa) shall be published in
6 the Federal Register; and

7 “(bb) provide directly to all
8 employers registered in the Sys-
9 tem.

10 “(F) DESIGNATED AGENTS.—The Sec-
11 retary shall establish a process—

12 “(i) for certifying, on an annual basis
13 or at such times as the Secretary may pre-
14 scribe, designated agents and other System
15 service providers seeking access to the Sys-
16 tem to perform verification queries on be-
17 half of employers, based upon training,
18 usage, privacy, and security standards pre-
19 scribed by the Secretary;

20 “(ii) for ensuring that designated
21 agents and other System service providers
22 are subject to monitoring to the same ex-
23 tent as direct access users; and

24 “(iii) for establishing standards for
25 certification of electronic I–9 programs.

1 “(G) REQUIREMENT TO PROVIDE INFOR-
2 MATION.—

3 “(i) IN GENERAL.—No later than 3
4 months after the date of the enactment of
5 the Border Security, Economic Oppor-
6 tunity, and Immigration Modernization
7 Act, the Secretary, in consultation with the
8 Secretary of Labor, the Secretary of Agri-
9 culture, the Commissioner, the Attorney
10 General, the Equal Employment Oppor-
11 tunity Commission, and the Administrator
12 of the Small Business Administration,
13 shall commence a campaign to disseminate
14 information respecting the procedures,
15 rights, and remedies prescribed under this
16 section.

17 “(ii) CAMPAIGN REQUIREMENTS.—
18 The campaign authorized under clause
19 (i)—

20 “(I) shall be aimed at increasing
21 the knowledge of employers, employ-
22 ees, and the general public concerning
23 employer and employee rights, respon-
24 sibilities, and remedies under this sec-
25 tion; and

1 “(II) shall be coordinated with
2 the public education campaign con-
3 ducted by U.S. Citizenship and Immi-
4 gration Services.

5 “(iii) ASSESSMENT.—The Secretary
6 shall assess the success of the campaign in
7 achieving the goals of the campaign.

8 “(iv) AUTHORITY TO CONTRACT.—In
9 order to carry out and assess the campaign
10 under this subparagraph, the Secretary
11 may, to the extent deemed appropriate and
12 subject to the availability of appropria-
13 tions, contract with public and private or-
14 ganizations for outreach and assessment
15 activities under the campaign.

16 “(v) AUTHORIZATION OF APPROPRIA-
17 TIONS.—There are authorized to be appro-
18 priated to carry out this paragraph
19 \$40,000,000 for each of the fiscal years
20 2014 through 2016.

21 “(H) AUTHORITY TO MODIFY INFORMA-
22 TION REQUIREMENTS.—Based on a regular re-
23 view of the System and the document
24 verification procedures to identify misuse or
25 fraudulent use and to assess the security of the

1 documents and processes used to establish iden-
2 tity or employment authorized status, the Sec-
3 retary, in consultation with the Commissioner,
4 after publication of notice in the Federal Reg-
5 ister and an opportunity for public comment,
6 may modify, if the Secretary determines that
7 the modification is necessary to ensure that the
8 System accurately and reliably determines the
9 identity and employment authorized status of
10 employees and maintain existing protections
11 against misuse, discrimination, fraud, and iden-
12 tity theft—

13 “(i) the information that shall be pre-
14 sented to the employer by an individual;

15 “(ii) the information that shall be pro-
16 vided to the System by the employer; and

17 “(iii) the procedures that shall be fol-
18 lowed by employers with respect to the
19 process of verifying an individual through
20 the System.

21 “(I) SELF-VERIFICATION.—Subject to ap-
22 propriate safeguards to prevent misuse of the
23 system, the Secretary, in consultation with the
24 Commissioner, shall establish a secure self-
25 verification procedure to permit an individual

1 who seeks to verify the individual's own employ-
2 ment eligibility to contact the appropriate agen-
3 cy and, in a timely manner, correct or update
4 the information contained in the System.

5 “(5) PROTECTION FROM LIABILITY FOR AC-
6 TIONS TAKEN ON THE BASIS OF INFORMATION PRO-
7 VIDED BY THE SYSTEM.—An employer shall not be
8 liable to a job applicant, an employee, the Federal
9 Government, or a State or local government, under
10 Federal, State, or local criminal or civil law for any
11 employment-related action taken with respect to a
12 job applicant or employee in good-faith reliance on
13 information provided by the System.

14 “(6) ADMINISTRATIVE APPEAL.—

15 “(A) IN GENERAL.—An individual who is
16 notified of a nonconfirmation may, not later
17 than 10 business days after the date that such
18 notice is received, file an administrative appeal
19 of such nonconfirmation with the Commissioner
20 if the notice is based on records maintained by
21 the Commissioner, or in any other case, with
22 the Secretary. An individual who did not timely
23 contest a further action notice timely received
24 by that individual for which the individual ac-

1 knowledgeed receipt may not be granted a review
2 under this paragraph.

3 “(B) ADMINISTRATIVE STAY OF NONCON-
4 FIRMATION.—The nonconfirmation shall be
5 automatically stayed upon the timely filing of
6 an administrative appeal, unless the noncon-
7 firmation resulted after the individual acknowl-
8 edged receipt of the further action notice but
9 failed to contact the appropriate agency within
10 the time provided. The stay shall remain in ef-
11 fect until the resolution of the appeal, unless
12 the Secretary or the Commissioner terminates
13 the stay based on a determination that the ad-
14 ministrative appeal is frivolous or filed for pur-
15 poses of delay.

16 “(C) REVIEW FOR ERROR.—The Secretary
17 and the Commissioner shall develop procedures
18 for resolving administrative appeals regarding
19 nonconfirmations based upon the information
20 that the individual has provided, including any
21 additional evidence or argument that was not
22 previously considered. Any such additional evi-
23 dence or argument shall be filed within 10 busi-
24 ness days of the date the appeal was originally
25 filed. Appeals shall be resolved within 20 busi-

1 ness days after the individual has submitted all
2 evidence and arguments the individual wishes to
3 submit, or has stated in writing that there is no
4 additional evidence that the individual wishes to
5 submit. The Secretary and the Commissioner
6 may, on a case by case basis for good cause, ex-
7 tend the filing and submission period in order
8 to ensure accurate resolution of an appeal be-
9 fore the Secretary or the Commissioner.

10 “(D) PREPONDERANCE OF EVIDENCE.—
11 Administrative appeal under this paragraph
12 shall be limited to whether a nonconfirmation
13 notice is supported by a preponderance of the
14 evidence.

15 “(E) DAMAGES, FEES, AND COSTS.—No
16 money damages, fees or costs may be awarded
17 in the administrative appeal process under this
18 paragraph.

19 “(7) REVIEW BY ADMINISTRATIVE LAW
20 JUDGE.—

21 “(A) IN GENERAL.—Not later than 30
22 days after the date an individual receives a final
23 determination on an administrative appeal
24 under paragraph (6), the individual may obtain
25 review of such determination by filing a com-

1 plaint with a Department of Justice administra-
2 tive law judge in accordance with this para-
3 graph.

4 “(B) STAY OF NONCONFIRMATION.—The
5 nonconfirmation related to such final deter-
6 mination shall be automatically stayed upon the
7 timely filing of a complaint under this para-
8 graph, and the stay shall remain in effect until
9 the resolution of the complaint, unless the ad-
10 ministrative law judge determines that the ac-
11 tion is frivolous or filed for purposes of delay.

12 “(C) SERVICE.—The respondent to com-
13 plaint filed under this paragraph is either the
14 Secretary or the Commissioner, but not both,
15 depending upon who issued the administrative
16 order under paragraph (6). In addition to serv-
17 ing the respondent, the plaintiff shall serve the
18 Attorney General.

19 “(D) AUTHORITY OF ADMINISTRATIVE
20 LAW JUDGE.—

21 “(i) RULES OF PRACTICE.—The Sec-
22 retary shall promulgate regulations regard-
23 ing the rules of practice in appeals brought
24 pursuant to this subsection.

1 application of the administrative law judge,
2 an appropriate district court of the United
3 States may issue an order requiring com-
4 pliance with such subpoena and any failure
5 to obey such order may be punished by
6 such court as a contempt of such court.

7 “(iv) TRAINING.—An administrative
8 law judge hearing cases shall have special
9 training respecting employment authorized
10 status verification.

11 “(E) ORDER BY ADMINISTRATIVE LAW
12 JUDGE.—

13 “(i) IN GENERAL.—The administra-
14 tive law judge shall issue and cause to be
15 served to the parties in the proceeding an
16 order which may be appealed as provided
17 in subparagraph (G).

18 “(ii) CONTENTS OF ORDER.—Such an
19 order shall uphold or reverse the final de-
20 termination on the request for reconsider-
21 ation and order lost wages and other ap-
22 propriate remedies as provided in subpara-
23 graph (F).

24 “(F) COMPENSATION FOR ERROR.—

1 “(i) IN GENERAL.—In cases in which
2 the administrative law judge reverses the
3 final determination of the Secretary or the
4 Commissioner made under paragraph (6),
5 and the administrative law judge finds
6 that—

7 “(I) the nonconfirmation was due
8 to gross negligence or intentional mis-
9 conduct of the employer, the adminis-
10 trative law judge may order the em-
11 ployer to pay the individual lost
12 wages, and reasonable costs and attor-
13 neys’ fees incurred during administra-
14 tive and judicial review; or

15 “(II) such final determination
16 was erroneous by reason of the neg-
17 ligence of the Secretary or the Com-
18 missioner, the administrative law
19 judge may order the Secretary or the
20 Commissioner to pay the individual
21 lost wages, and reasonable costs and
22 attorneys’ fees incurred during admin-
23 istrative appeal and administrative
24 law judge.

1 “(ii) CALCULATION OF LOST
2 WAGES.—Lost wages shall be calculated
3 based on the wage rate and work schedule
4 that prevailed prior to termination. The in-
5 dividual shall be compensated for wages
6 lost beginning on the first scheduled work
7 day after employment was terminated and
8 ending 120 days after completion of the
9 administrative law judge’s review described
10 in this paragraph or the day after the indi-
11 vidual is reinstated or obtains employment
12 elsewhere, whichever occurs first. If the in-
13 dividual obtains employment elsewhere at a
14 lower wage rate, the individual shall be
15 compensated for the difference in wages
16 for the period ending 120 days after com-
17 pletion of the administrative law judge re-
18 view process. No lost wages shall be award-
19 ed for any period of time during which the
20 individual was not in employment author-
21 ized status.

22 “(iii) PAYMENT OF COMPENSATION.—
23 Notwithstanding any other law, payment of
24 compensation for lost wages, costs, and at-
25 torneys’ fees under this paragraph, or com-

1 promise settlements of the same, shall be
2 made as provided by section 1304 of title
3 31, United States Code. Appropriations
4 made available to the Secretary or the
5 Commissioner, accounts provided for under
6 section 286, and funds from the Federal
7 Old-Age and Survivors Insurance Trust
8 Fund or the Federal Disability Insurance
9 Trust Fund shall not be available to pay
10 such compensation.

11 “(G) APPEAL.—No later than 45 days
12 after the entry of such final order, any person
13 adversely affected by such final order may seek
14 review of such order in the United States Court
15 of Appeals for the circuit in which the violation
16 is alleged to have occurred or in which the em-
17 ployer resides or transacts business.

18 “(8) MANAGEMENT OF THE SYSTEM.—

19 “(A) IN GENERAL.—The Secretary is au-
20 thorized to establish, manage, and modify the
21 System, which shall—

22 “(i) respond to inquiries made by par-
23 ticipating employers at any time through
24 the internet, or such other means as the
25 Secretary may designate, concerning an in-

1 dividual’s identity and whether the indi-
2 vidual is in employment authorized status;

3 “(ii) maintain records of the inquiries
4 that were made, of confirmations provided
5 (or not provided), and of the codes pro-
6 vided to employers as evidence of their
7 compliance with their obligations under the
8 System; and

9 “(iii) provide information to, and re-
10 quire action by, employers and individuals
11 using the System.

12 “(B) DESIGN AND OPERATION OF SYS-
13 TEM.—The System shall be designed and oper-
14 ated—

15 “(i) to maximize its reliability and
16 ease of use by employers consistent with
17 protecting the privacy and security of the
18 underlying information, and ensuring full
19 notice of such use to employees;

20 “(ii) to maximize its ease of use by
21 employees, including direct notification of
22 its use, of results, and ability to challenge
23 results;

24 “(iii) to respond accurately to all in-
25 quiries made by employers on whether in-

1 individuals are authorized to be employed
2 and to register any times when the system
3 is unable to receive inquiries;

4 “(iv) to maintain appropriate adminis-
5 trative, technical, and physical safeguards
6 to prevent unauthorized disclosure of per-
7 sonal information, misuse by employers
8 and employees, and discrimination;

9 “(v) to require regularly scheduled re-
10 fresher training of all users of the System
11 to ensure compliance with all procedures;

12 “(vi) to allow for auditing of the use
13 of the System to detect misuse, discrimina-
14 tion, fraud, and identity theft, and to pre-
15 serve the integrity and security of the in-
16 formation in all of the System, including—

17 “(I) to develop and use tools and
18 processes to detect or prevent fraud
19 and identity theft, such as multiple
20 uses of the same identifying informa-
21 tion or documents to fraudulently gain
22 employment;

23 “(II) to develop and use tools
24 and processes to detect and prevent

1 misuse of the system by employers
2 and employees;

3 “(III) to develop tools and proc-
4 esses to detect anomalies in the use of
5 the system that may indicate potential
6 fraud or misuse of the system;

7 “(IV) to audit documents and in-
8 formation submitted by employees to
9 employers, including authority to con-
10 duct interviews with employers and
11 employees, and obtain information
12 concerning employment from the em-
13 ployer;

14 “(vii) to confirm identity and employ-
15 ment authorization through verification
16 and comparison of records as determined
17 necessary by the Secretary;

18 “(viii) to confirm electronically the
19 issuance of the employment authorization
20 or identity document and—

21 “(I) if such photograph is avail-
22 able, to display the digital photograph
23 that the issuer placed on the docu-
24 ment so that the employer can com-
25 pare the photograph displayed to the

1 photograph on the document pre-
2 sented by the employee; or

3 “(II) if a photograph is not avail-
4 able from the issuer, to confirm the
5 authenticity of the document using
6 such alternative procedures as the
7 Secretary may specify; and

8 “(ix) to provide appropriate notifica-
9 tion directly to employers registered with
10 the System of all changes made by the
11 Secretary or the Commissioner related to
12 allowed and prohibited documents, and use
13 of the System.

14 “(C) SAFEGUARDS TO THE SYSTEM.—

15 “(i) REQUIREMENT TO DEVELOP.—

16 The Secretary, in consultation with the
17 Commissioner and other appropriate Fed-
18 eral and State agencies, shall develop poli-
19 cies and procedures to ensure protection of
20 the privacy and security of personally iden-
21 tifiable information and identifiers con-
22 tained in the records accessed or main-
23 tained by the System. The Secretary, in
24 consultation with the Commissioner and
25 other appropriate Federal and State agen-

1 cies, shall develop and deploy appropriate
2 privacy and security training for the Fed-
3 eral and State employees accessing the
4 records under the System.

5 “(ii) PRIVACY AUDITS.—The Sec-
6 retary, acting through the Chief Privacy
7 Officer of the Department, shall conduct
8 regular privacy audits of the policies and
9 procedures established under clause (i), in-
10 cluding any collection, use, dissemination,
11 and maintenance of personally identifiable
12 information and any associated informa-
13 tion technology systems, as well as scope of
14 requests for this information. The Chief
15 Privacy Officer shall review the results of
16 the audits and recommend to the Secretary
17 any changes necessary to improve the pri-
18 vacy protections of the program.

19 “(iii) RECORDS SECURITY PRO-
20 GRAM.—Any person, including a private
21 third party vendor, who retains document
22 verification or System data pursuant to
23 this section shall implement an effective
24 records security program that—

1 “(I) ensures that only authorized
2 personnel have access to document
3 verification or System data; and

4 “(II) ensures that whenever such
5 data is created, completed, updated,
6 modified, altered, or corrected in elec-
7 tronic format, a secure and perma-
8 nent record is created that establishes
9 the date of access, the identity of the
10 individual who accessed the electronic
11 record, and the particular action
12 taken.

13 “(iv) RECORDS SECURITY PRO-
14 GRAM.—In addition to the security meas-
15 ures described in clause (iii), a private
16 third party vendor who retains document
17 verification or System data pursuant to
18 this section shall implement an effective
19 records security program that—

20 “(I) provides for backup and re-
21 covery of any records maintained in
22 electronic format to protect against
23 information loss, such as power inter-
24 ruptions; and

1 “(II) ensures that employees are
2 trained to minimize the risk of unau-
3 thorized or accidental alteration or
4 erasure of such data in electronic for-
5 mat.

6 “(v) AUTHORIZED PERSONNEL DE-
7 FINED.—In this subparagraph, the term
8 ‘authorized personnel’ means anyone reg-
9 istered as a System user, or anyone with
10 partial or full responsibility for completion
11 of employment authorization verification or
12 retention of data in connection with em-
13 ployment authorization verification on be-
14 half of an employer.

15 “(D) AVAILABLE FACILITIES AND ALTER-
16 NATIVE ACCOMMODATIONS.—The Secretary
17 shall make appropriate arrangements and de-
18 velop standards to allow employers or employ-
19 ees, including remote hires, who are otherwise
20 unable to access the System to use electronic
21 and telephonic formats (including video confer-
22 encing, scanning technology, and other available
23 technologies), Federal Government facilities,
24 public facilities, or other available locations in
25 order to utilize the System.

1 “(E) RESPONSIBILITIES OF THE SEC-
2 RETARY.—

3 “(i) IN GENERAL.—As part of the
4 System, the Secretary shall maintain a re-
5 liable, secure method, which, operating
6 through the System and within the time
7 periods specified, compares the name, alien
8 identification or authorization number, or
9 other information as determined relevant
10 by the Secretary, provided in an inquiry
11 against such information maintained or
12 accessed by the Secretary in order to con-
13 firm (or not confirm) the validity of the in-
14 formation provided, the correspondence of
15 the name and number, whether the alien
16 has employment authorized status (or, to
17 the extent that the Secretary determines to
18 be feasible and appropriate, whether the
19 records available to the Secretary verify
20 the identity or status of a national of the
21 United States), and such other information
22 as the Secretary may prescribe.

23 “(ii) PHOTOGRAPH DISPLAY.—As part
24 of the System, the Secretary shall establish
25 a reliable, secure method, which, operating

1 through the System, displays the digital
2 photograph described in subparagraph
3 (B)(viii)(I).

4 “(iii) TIMING OF NOTICES.—The Sec-
5 retary shall have authority to prescribe
6 when a confirmation, nonconfirmation, or
7 further action notice shall be issued.

8 “(iv) USE OF INFORMATION.—The
9 Secretary shall perform regular audits
10 under the System, as described in subpara-
11 graph (B)(vi) and shall utilize the informa-
12 tion obtained from such audits, as well as
13 any information obtained from the Com-
14 missioner pursuant to part E of title XI of
15 the Social Security Act (42 U.S.C. 1301 et
16 seq.), for the purposes of this section and
17 to administer and enforce the immigration
18 laws.

19 “(v) IDENTITY FRAUD PROTECTION.—
20 To prevent identity fraud, not later than
21 18 months after the date of the enactment
22 of the Border Security, Economic Oppor-
23 tunity, and Immigration Modernization
24 Act, the Secretary shall—

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1 “(I) in consultation with the
2 Commissioner, establish a program to
3 provide a reliable, secure method for
4 an individual to temporarily suspend
5 or limit the use of the individual’s so-
6 cial security account number or other
7 identifying information for verification
8 by the System; and

9 “(II) for each individual being
10 verified through the System—

11 “(aa) notify the individual
12 that the individual has the option
13 to limit the use of the individ-
14 ual’s social security account num-
15 ber or other identifying informa-
16 tion for verification by the Sys-
17 tem; and

18 “(bb) provide instructions to
19 the individuals for exercising the
20 option referred to in item (aa).

21 “(vi) PROTECTION FROM MULTIPLE
22 USE.—The Secretary and the Commis-
23 sioner shall establish a procedure for iden-
24 tifying and handling a situation in which a
25 social security account number has been

1 identified to be subject to unusual multiple
2 use in the System or is otherwise suspected
3 or determined to have been compromised
4 by identity fraud.

5 “(vii) MONITORING AND COMPLIANCE
6 UNIT.—The Secretary shall establish or
7 designate a monitoring and compliance
8 unit to detect and reduce identity fraud
9 and other misuse of the System.

10 “(viii) CIVIL RIGHTS AND CIVIL LIB-
11 ERTIES ASSESSMENTS.—

12 “(I) REQUIREMENT TO CON-
13 DUCT.—The Secretary shall conduct
14 regular civil rights and civil liberties
15 assessments of the System, including
16 participation by employers, other pri-
17 vate entities, and Federal, State, and
18 local government entities.

19 “(II) REQUIREMENT TO RE-
20 SPOND.—Employers, other private en-
21 tities, and Federal, State, and local
22 entities shall timely respond to any re-
23 quest in connection with such an as-
24 sessment.

1 “(III) ASSESSMENT AND REC-
2 COMMENDATIONS.—The Officer for
3 Civil Rights and Civil Liberties of the
4 Department shall review the results of
5 each such assessment and recommend
6 to the Secretary any changes nec-
7 essary to improve the civil rights and
8 civil liberties protections of the Sys-
9 tem.

10 “(F) GRANTS TO STATES.—

11 “(i) IN GENERAL.—The Secretary
12 shall create and administer a grant pro-
13 gram to help provide funding for States
14 that grant—

15 “(I) the Secretary access to driv-
16 er’s license information as needed to
17 confirm that a driver’s license pre-
18 sented under subsection (c)(1)(D)(i)
19 confirms the identity of the subject of
20 the System check, and that a driver’s
21 license matches the State’s records;
22 and

23 “(II) such assistance as the Sec-
24 retary may request in order to resolve

1 further action notices or nonconfirma-
2 tions relating to such information.

3 “(ii) CONSTRUCTION WITH THE DRIV-
4 ER’S PRIVACY PROTECTION ACT OF 1994.—
5 The provision of a photograph to the Sec-
6 retary as described in clause (i) may not be
7 construed as a violation of section 2721 of
8 title 18, United States Code, and is a per-
9 missible use under subsection (b)(1) of
10 that section.

11 “(iii) AUTHORIZATION OF APPROPRIA-
12 TIONS.—There is authorized to be appro-
13 priated to the Secretary \$250,000,000 to
14 carry out this subparagraph.

15 “(G) RESPONSIBILITIES OF THE SEC-
16 RETARY OF STATE.—As part of the System, the
17 Secretary of State shall provide to the Sec-
18 retary access to passport and visa information
19 as needed to confirm that a passport, passport
20 card, or visa presented under subsection
21 (c)(1)(C) confirms the identity of the subject of
22 the System check, and that a passport, passport
23 card, or visa photograph matches the Secretary
24 of State’s records, and shall provide such assist-
25 ance as the Secretary may request in order to

1 resolve further action notices or nonconfirma-
2 tions relating to such information.

3 “(H) UPDATING INFORMATION.—The
4 Commissioner, the Secretary, and the Secretary
5 of State shall update their information in a
6 manner that promotes maximum accuracy and
7 shall provide a process for the prompt correc-
8 tion of erroneous information.

9 “(9) LIMITATION ON USE OF THE SYSTEM.—
10 Notwithstanding any other provision of law, nothing
11 in this subsection may be construed to permit or
12 allow any department, bureau, or other agency of
13 the United States Government or any other entity to
14 utilize any information, database, or other records
15 assembled under this subsection for any purpose
16 other than for employment verification or to ensure
17 secure, appropriate and nondiscriminatory use of the
18 System.

19 “(10) ANNUAL REPORT AND CERTIFICATION.—
20 Not later than 18 months after the promulgation of
21 regulations to implement this subsection, and annu-
22 ally thereafter, the Secretary shall submit to Con-
23 gress a report that includes the following:

24 “(A) An assessment of the accuracy rates
25 of further action notices and other System no-

1 tices provided by employers to individuals who
2 are authorized to be employed in the United
3 States.

4 “(B) An assessment of the accuracy rates
5 of further action notices and other System no-
6 tices provided directly (by the System) in a
7 timely fashion to individuals who are not au-
8 thorized to be employed in the United States.

9 “(C) An assessment of any challenges
10 faced by small employers in utilizing the Sys-
11 tem.

12 “(D) An assessment of the rate of em-
13 ployer noncompliance (in addition to failure to
14 provide required notices in a timely fashion) in
15 each of the following categories:

16 “(i) Taking adverse action based on a
17 further action notice.

18 “(ii) Use of the System for non-
19 employees or other individuals before they
20 are offered employment.

21 “(iii) Use of the System to reverify
22 employment authorized status of current
23 employees except if authorized to do so.

1 “(iv) Use of the System selectively,
2 except in cases in which such use is au-
3 thorized.

4 “(v) Use of the System to deny em-
5 ployment or post-employment benefits or
6 otherwise interfere with labor rights.

7 “(vi) Requiring employees or appli-
8 cants to use any self-verification feature or
9 to provide self-verification results.

10 “(vii) Discouraging individuals who
11 receive a further action notice from chal-
12 lenging the further action notice or appeal-
13 ing a determination made by the System.

14 “(E) An assessment of the rate of em-
15 ployee noncompliance in each of the following
16 categories:

17 “(i) Obtaining employment when un-
18 authorized with an employer complying
19 with the System in good faith.

20 “(ii) Failure to provide required docu-
21 ments in a timely manner.

22 “(iii) Attempting to use fraudulent
23 documents or documents not related to the
24 individual.

1 “(iv) Misuse of the administrative ap-
2 peal and judicial review process.

3 “(F) An assessment of the amount of time
4 taken for—

5 “(i) the System to provide the con-
6 firmation or further action notice;

7 “(ii) individuals to contest further ac-
8 tion notices;

9 “(iii) the System to provide a con-
10 firmation or nonconfirmation of a con-
11 tested further action notice;

12 “(iv) individuals to file an administra-
13 tive appeal of a nonconfirmation; and

14 “(v) resolving administrative appeals
15 regarding nonconfirmations.

16 “(11) ANNUAL GAO STUDY AND REPORT.—

17 “(A) REQUIREMENT.—The Comptroller
18 General shall, for each year, undertake a study
19 to evaluate the accuracy, efficiency, integrity,
20 and impact of the System.

21 “(B) REPORT.—Not later than 18 months
22 after the promulgation of regulations to imple-
23 ment this subsection, and yearly thereafter, the
24 Comptroller General shall submit to Congress a
25 report containing the findings of the study car-

1 ried out under this paragraph. Each such re-
2 port shall include, at a minimum, the following:

3 “(i) An assessment of System per-
4 formance with respect to the rate at which
5 individuals who are eligible for employment
6 in the United States are correctly approved
7 within the required periods, including a
8 separate assessment of such rate for natu-
9 ralized United States citizens, nationals of
10 the United States, and aliens.

11 “(ii) An assessment of the privacy and
12 confidentiality of the System and of the
13 overall security of the System with respect
14 to cybertheft and theft or misuse of private
15 data.

16 “(iii) An assessment of whether the
17 System is being implemented in a manner
18 that is not discriminatory or used for retal-
19 iation against employees.

20 “(iv) An assessment of the most com-
21 mon causes for the erroneous issuance of
22 nonconfirmations by the System and rec-
23 ommendations to correct such causes.

1 “(v) The recommendations of the
2 Comptroller General regarding System im-
3 provements.

4 “(vi) An assessment of the frequency
5 and magnitude of changes made to the
6 System and the impact on the ability for
7 employers to comply in good faith.

8 “(vii) An assessment of the direct and
9 indirect costs incurred by employers in
10 complying with the System, including costs
11 associated with retaining potential employ-
12 ees through the administrative appeals
13 process and receiving a nonconfirmation.

14 “(viii) An assessment of any backlogs
15 or delays in the System providing the con-
16 firmation or further action notice and im-
17 pacts to hiring by employers.

18 “(e) COMPLIANCE.—

19 “(1) COMPLAINTS AND INVESTIGATIONS.—The
20 Secretary shall establish procedures—

21 “(A) for individuals and entities to file
22 complaints respecting potential violations of
23 subsections (a) or (f)(1);

1 “(B) for the investigation of those com-
2 plaints which the Secretary deems appropriate
3 to investigate; and

4 “(C) for providing notification to the Spe-
5 cial Counsel for Immigration-Related Unfair
6 Employment Practices of the Department of
7 Justice of potential violations of section 274B.

8 “(2) AUTHORITY IN INVESTIGATIONS.—In con-
9 ducting investigations and proceedings under this
10 subsection—

11 “(A) immigration officers shall have rea-
12 sonable access to examine evidence of the em-
13 ployer being investigated;

14 “(B) immigration officers designated by
15 the Secretary, and administrative law judges
16 and other persons authorized to conduct pro-
17 ceedings under this section, may compel by sub-
18 poena the attendance of relevant witnesses and
19 the production of relevant evidence at any des-
20 ignated place in an investigation or case under
21 this subsection. In case of refusal to fully com-
22 ply with a subpoena lawfully issued under this
23 paragraph, the Secretary may request that the
24 Attorney General apply in an appropriate dis-
25 trict court of the United States for an order re-

1 quiring compliance with the subpoena, and any
2 failure to obey such order may be punished by
3 the court as contempt. Failure to cooperate
4 with the subpoena shall be subject to further
5 penalties, including further fines and the void-
6 ing of any mitigation of penalties or termi-
7 nation of proceedings under paragraph (4)(E);
8 and

9 “(C) the Secretary, in cooperation with the
10 Commissioner and Attorney General, and in
11 consultation with other relevant agencies, shall
12 establish a Joint Employment Fraud Task
13 Force consisting of, at a minimum—

14 “(i) the System’s compliance per-
15 sonnel;

16 “(ii) immigration law enforcement of-
17 ficers;

18 “(iii) personnel of the Office of Spe-
19 cial Counsel for Immigration-Related Un-
20 fair Employment Practices of the Depart-
21 ment of Justice;

22 “(iv) personnel of the Office for Civil
23 Rights and Civil Liberties of the Depart-
24 ment; and

1 “(v) personnel of Office of Inspector
2 General of the Social Security Administra-
3 tion.

4 “(3) COMPLIANCE PROCEDURES.—

5 “(A) PRE-PENALTY NOTICE.—If the Sec-
6 retary has reasonable cause to believe that
7 there has been a civil violation of this section in
8 the previous 3 years, the Secretary shall issue
9 to the employer concerned a written notice of
10 the Department’s intention to issue a claim for
11 a monetary or other penalty. Such pre-penalty
12 notice shall—

13 “(i) describe the violation;

14 “(ii) specify the laws and regulations
15 allegedly violated;

16 “(iii) disclose the material facts which
17 establish the alleged violation;

18 “(iv) describe the penalty sought to be
19 imposed; and

20 “(v) inform such employer that such
21 employer shall have a reasonable oppor-
22 tunity to make representations as to why a
23 monetary or other penalty should not be
24 imposed.

1 “(B) EMPLOYER’S RESPONSE.—Whenever
2 any employer receives written pre-penalty notice
3 of a fine or other penalty in accordance with
4 subparagraph (A), the employer may, within 60
5 days from receipt of such notice, file with the
6 Secretary its written response to the notice.
7 The response may include any relevant evidence
8 or proffer of evidence that the employer wishes
9 to present with respect to whether the employer
10 violated this section and whether, if so, the pen-
11 alty should be mitigated, and shall be filed and
12 considered in accordance with procedures to be
13 established by the Secretary.

14 “(C) RIGHT TO A HEARING.—Before
15 issuance of an order imposing a penalty on any
16 employer, person, or entity, the employer, per-
17 son, or entity shall be entitled to a hearing be-
18 fore an administrative law judge, if requested
19 within 60 days of the notice of penalty. The
20 hearing shall be held at the nearest location
21 practicable to the place where the employer,
22 person, or entity resides or of the place where
23 the alleged violation occurred.

24 “(D) ISSUANCE OF ORDERS.—If no hear-
25 ing is so requested, the Secretary’s imposition

1 of the order shall constitute a final and
2 unappealable order. If a hearing is requested
3 and the administrative law judge determines,
4 upon clear and convincing evidence received,
5 that there was a violation, the administrative
6 law judge shall issue the final determination
7 with a written penalty claim. The penalty claim
8 shall specify all charges in the information pro-
9 vided under clauses (i) through (iii) of subpara-
10 graph (A) and any mitigation of the penalty
11 that the administrative law judge deems appro-
12 priate under paragraph (4)(E).

13 “(4) CIVIL PENALTIES.—

14 “(A) HIRING OR CONTINUING TO EMPLOY
15 UNAUTHORIZED ALIENS.—Any employer that
16 violates any provision of subsection (a)(1)(A) or
17 (a)(2) shall—

18 “(i) pay a civil penalty of not less
19 than \$3,500 and not more than \$7,500 for
20 each unauthorized alien with respect to
21 which each violation of either subsection
22 (a)(1)(A) or (a)(2) occurred;

23 “(ii) if the employer has previously
24 been fined as a result of a previous en-
25 forcement action or previous violation

1 under this paragraph, pay a civil penalty of
2 not less than \$5,000 and not more than
3 \$15,000 for each unauthorized alien with
4 respect to which a violation of either sub-
5 section (a)(1)(A) or (a)(2) occurred; and

6 “(iii) if the employer has previously
7 been fined more than once under this para-
8 graph, pay a civil penalty of not less than
9 \$10,000 and not more than \$25,000 for
10 each unauthorized alien with respect to
11 which a violation of either subsection
12 (a)(1)(A) or (a)(2) occurred.

13 “(B) ENHANCED PENALTIES.—After the
14 Secretary certifies to Congress that the System
15 has been established, implemented, and made
16 mandatory for use by all employers in the
17 United States, the Secretary may establish an
18 enhanced civil penalty for an employer who—

19 “(i) fails to query the System to verify
20 the identify and work authorized status of
21 an individual; and

22 “(ii) violates a Federal, State, or local
23 law related to—

24 “(I) the payment of wages;

1 “(II) hours worked by employees;

2 or

3 “(III) workplace health and safe-

4 ty.

5 “(C) RECORDKEEPING OR VERIFICATION
6 PRACTICES.—Any employer that violates or fails
7 to comply with any requirement under sub-
8 section (a)(1)(B), other than a minor or inad-
9 vertent failure, as determined by the Secretary,
10 shall pay a civil penalty of—

11 “(i) not less than \$500 and not more
12 than \$2,000 for each violation;

13 “(ii) if an employer has previously
14 been fined under this paragraph, not less
15 than \$1,000 and not more than \$4,000 for
16 each violation; and

17 “(iii) if an employer has previously
18 been fined more than once under this para-
19 graph, not less than \$2,000 and not more
20 than \$8,000 for each violation.

21 “(D) OTHER PENALTIES.—The Secretary
22 may impose additional penalties for violations,
23 including cease and desist orders, specially de-
24 signed compliance plans to prevent further vio-
25 lations, suspended fines to take effect in the

1 event of a further violation, and in appropriate
2 cases, the remedy provided by paragraph (f)(2).

3 “(E) MITIGATION.—The Secretary or, if
4 an employer requests a hearing, the administra-
5 tive law judge, is authorized, upon such terms
6 and conditions as the Secretary or administra-
7 tive law judge deems reasonable and just and in
8 accordance with such procedures as the Sec-
9 retary may establish or any procedures estab-
10 lished governing the administrative law judge’s
11 assessment of penalties, to reduce or mitigate
12 penalties imposed upon employers, based upon
13 factors including, the employer’s hiring volume,
14 compliance history, good-faith implementation
15 of a compliance program, the size and level of
16 sophistication of the employer, and voluntary
17 disclosure of violations of this subsection to the
18 Secretary. The Secretary or administrative law
19 judge shall not mitigate a penalty below the
20 minimum penalty provided by this section, ex-
21 cept that the Secretary may, in the case of an
22 employer subject to penalty for recordkeeping
23 or verification violations only who has not pre-
24 viously been penalized under this section, in the
25 Secretary’s or administrative law judge’s discre-

tion, mitigate the penalty below the statutory minimum or remit it entirely. In any case where a civil money penalty has been imposed on an employer under section 274B for an action or omission that is also a violation of this section, the Secretary or administrative law judge shall mitigate any civil money penalty under this section by the amount of the penalty imposed under section 274B.

“(F) EFFECTIVE DATE.—The civil money penalty amounts and the enhanced penalties provided by subparagraphs (A), (B), and (C) of this paragraph and by subsection (f)(2) shall apply to violations of this section committed on or after the date that is 1 year after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act. For violations committed prior to such date of enactment, the civil money penalty amounts provided by regulations implementing this section as in effect the minute before such date of enactment with respect to knowing hiring or continuing employment, verification, or indemnity bond violations, as appropriate, shall apply.

1 “(5) ORDER OF INTERNAL REVIEW AND CER-
2 TIFICATION OF COMPLIANCE.—

3 “(A) EMPLOYER COMPLIANCE.—If the
4 Secretary has reasonable cause to believe that
5 an employer has failed to comply with this sec-
6 tion, the Secretary is authorized, at any time,
7 to require that the employer certify that it is in
8 compliance with this section, or has instituted a
9 program to come into compliance.

10 “(B) EMPLOYER CERTIFICATION.—

11 “(i) REQUIREMENT.—Except as pro-
12 vided in subparagraph (C), not later than
13 60 days after receiving a notice from the
14 Secretary requiring a certification under
15 subparagraph (A), an official with respon-
16 sibility for, and authority to bind the com-
17 pany on, all hiring and immigration com-
18 pliance notices shall certify under penalty
19 of perjury that the employer is in conform-
20 ance with the requirements of paragraphs
21 (1) through (4) of subsection (c), per-
22 taining to document verification require-
23 ments, and with subsection (d), pertaining
24 to the System (once the System is imple-
25 mented with respect to that employer ac-

1 cording to the requirements under sub-
2 section (d)(2)), and with any additional re-
3 quirements that the Secretary may promul-
4 gate by regulation pursuant to subsection
5 (c) or (d) or that the employer has insti-
6 tuted a program to come into compliance
7 with these requirements.

8 “(ii) APPLICATION.—Clause (i) shall
9 not apply until the date that the Secretary
10 certifies to Congress that the System has
11 been established, implemented, and made
12 mandatory for use by all employers in the
13 United States.

14 “(C) EXTENSION OF DEADLINE.—At the
15 request of the employer, the Secretary may ex-
16 tend the 60-day deadline for good cause.

17 “(D) STANDARDS OR METHODS.—The Sec-
18 retary is authorized to publish in the Federal
19 Register standards or methods for such certifi-
20 cation, require specific recordkeeping practices
21 with respect to such certifications, and audit
22 the records thereof at any time. This authority
23 shall not be construed to diminish or qualify
24 any other penalty provided by this section.

1 “(6) REQUIREMENTS FOR REVIEW OF A FINAL
2 DETERMINATION.—With respect to judicial review of
3 a final determination or penalty order issued under
4 paragraph (3)(D), the following requirements apply:

5 “(A) DEADLINE.—The petition for review
6 must be filed no later than 30 days after the
7 date of the final determination or penalty order
8 issued under paragraph (3)(D).

9 “(B) VENUE AND FORMS.—The petition
10 for review shall be filed with the court of ap-
11 peals for the judicial circuit where the employ-
12 er’s principal place of business was located
13 when the final determination or penalty order
14 was made. The record and briefs do not have
15 to be printed. The court shall review the pro-
16 ceeding on a typewritten or electronically filed
17 record and briefs.

18 “(C) SERVICE.—The respondent is the
19 Secretary. In addition to serving the respond-
20 ent, the petitioner shall serve the Attorney Gen-
21 eral.

22 “(D) PETITIONER’S BRIEF.—The peti-
23 tioner shall serve and file a brief in connection
24 with a petition for judicial review not later than
25 40 days after the date on which the administra-

1 tive record is available, and may serve and file
2 a reply brief not later than 14 days after serv-
3 ice of the brief of the respondent, and the court
4 may not extend these deadlines, except for good
5 cause shown. If a petitioner fails to file a brief
6 within the time provided in this paragraph, the
7 court shall dismiss the appeal unless a manifest
8 injustice would result.

9 “(E) SCOPE AND STANDARD FOR RE-
10 VIEW.—The court of appeals shall conduct a de
11 novo review of the administrative record on
12 which the final determination was based and
13 any additional evidence that the Court finds
14 was previously unavailable at the time of the
15 administrative hearing.

16 “(F) EXHAUSTION OF ADMINISTRATIVE
17 REMEDIES.—A court may review a final deter-
18 mination under paragraph (3)(C) only if—

19 “(i) the petitioner has exhausted all
20 administrative remedies available to the pe-
21 titioner as of right, including any adminis-
22 trative remedies established by regulation,
23 and

24 “(ii) another court has not decided
25 the validity of the order, unless the review-

1 ing court finds that the petition presents
2 grounds that could not have been pre-
3 sented in the prior judicial proceeding or
4 that the remedy provided by the prior pro-
5 ceeding was inadequate or ineffective to
6 test the validity of the order.

7 “(G) ENFORCEMENT OF ORDERS.—If the
8 final determination issued against the employer
9 under this subsection is not subjected to review
10 as provided in this paragraph, the Attorney
11 General, upon request by the Secretary, may
12 bring a civil action to enforce compliance with
13 the final determination in any appropriate dis-
14 trict court of the United States. The court, on
15 a proper showing, shall issue a temporary re-
16 straining order or a preliminary or permanent
17 injunction requiring that the employer comply
18 with the final determination issued against that
19 employer under this subsection. In any such
20 civil action, the validity and appropriateness of
21 the final determination shall not be subject to
22 review

23 “(7) CREATION OF LIEN.—If any employer lia-
24 ble for a fee or penalty under this section neglects
25 or refuses to pay such liability after demand and

1 fails to file a petition for review (if applicable) as
2 provided in paragraph (6), the amount of the fee or
3 penalty shall be a lien in favor of the United States
4 on all property and rights to property, whether real
5 or personal, belonging to such employer. If a petition
6 for review is filed as provided in paragraph (6), the
7 lien shall arise upon the entry of a final judgment
8 by the court. The lien continues for 20 years or until
9 the liability is satisfied, remitted, set aside, or termi-
10 nated.

11 “(8) FILING NOTICE OF LIEN.—

12 “(A) PLACE FOR FILING.—The notice of a
13 lien referred to in paragraph (7) shall be filed
14 as described in 1 of the following:

15 “(i) UNDER STATE LAWS.—

16 “(I) REAL PROPERTY.—In the
17 case of real property, in 1 office with-
18 in the State (or the county, or other
19 governmental subdivision), as des-
20 ignated by the laws of such State, in
21 which the property subject to the lien
22 is situated.

23 “(II) PERSONAL PROPERTY.—In
24 the case of personal property, whether
25 tangible or intangible, in 1 office with-

1 in the State (or the county, or other
2 governmental subdivision), as des-
3 ignated by the laws of such State, in
4 which the property subject to the lien
5 is situated, except that State law
6 merely conforming to or reenacting
7 Federal law establishing a national fil-
8 ing system does not constitute a sec-
9 ond office for filing as designated by
10 the laws of such State.

11 “(ii) WITH CLERK OF DISTRICT
12 COURT.—In the office of the clerk of the
13 United States district court for the judicial
14 district in which the property subject to
15 the lien is situated, whenever the State has
16 not by law designated 1 office which meets
17 the requirements of clause (i).

18 “(iii) WITH RECORDER OF DEEDS OF
19 THE DISTRICT OF COLUMBIA.—In the of-
20 fice of the Recorder of Deeds of the Dis-
21 trict of Columbia, if the property subject to
22 the lien is situated in the District of Co-
23 lumbia.

24 “(B) SITUS OF PROPERTY SUBJECT TO
25 LIEN.—For purposes of subparagraph (A),

1 property shall be deemed to be situated as fol-
2 lows:

3 “(i) REAL PROPERTY.—In the case of
4 real property, at its physical location.

5 “(ii) PERSONAL PROPERTY.—In the
6 case of personal property, whether tangible
7 or intangible, at the residence of the tax-
8 payer at the time the notice of lien is filed.

9 “(C) DETERMINATION OF RESIDENCE.—
10 For purposes of subparagraph (B)(ii), the resi-
11 dence of a corporation or partnership shall be
12 deemed to be the place at which the principal
13 executive office of the business is located, and
14 the residence of a taxpayer whose residence is
15 outside the United States shall be deemed to be
16 in the District of Columbia.

17 “(D) EFFECT OF FILING NOTICE OF
18 LIEN.—

19 “(i) IN GENERAL.—Upon filing of a
20 notice of lien in the manner described in
21 this paragraph, the lien shall be valid
22 against any purchaser, holder of a security
23 interest, mechanic’s lien, or judgment lien
24 creditor, except with respect to properties
25 or transactions specified in subsection (b),

1 (c), or (d) of section 6323 of the Internal
2 Revenue Code of 1986 for which a notice
3 of tax lien properly filed on the same date
4 would not be valid.

5 “(ii) NOTICE OF LIEN.—The notice of
6 lien shall be considered a notice of lien for
7 taxes payable to the United States for the
8 purpose of any State or local law providing
9 for the filing of a notice of a tax lien. A
10 notice of lien that is registered, recorded,
11 docketed, or indexed in accordance with
12 the rules and requirements relating to
13 judgments of the courts of the State where
14 the notice of lien is registered, recorded,
15 docketed, or indexed shall be considered
16 for all purposes as the filing prescribed by
17 this section.

18 “(iii) OTHER PROVISIONS.—The pro-
19 visions of section 3201(e) of title 28,
20 United States Code, shall apply to liens
21 filed as prescribed by this paragraph.

22 “(E) ENFORCEMENT OF A LIEN.—A lien
23 obtained through this paragraph shall be con-
24 sidered a debt as defined by section 3002 of

1 title 28, United States Code and enforceable
2 pursuant to chapter 176 of such title.

3 “(9) ATTORNEY GENERAL ADJUDICATION.—

4 The Attorney General shall have jurisdiction to adju-
5 dicate administrative proceedings under this sub-
6 section. Such proceedings shall be conducted in ac-
7 cordance with requirements of section 554 of title 5,
8 United States Code.

9 “(f) CRIMINAL AND CIVIL PENALTIES AND INJUNC-
10 TIONS.—

11 “(1) PROHIBITION OF INDEMNITY BONDS.—It
12 is unlawful for an employer, in the hiring of any in-
13 dividual, to require the individual to post a bond or
14 security, to pay or agree to pay an amount, or other-
15 wise to provide a financial guarantee or indemnity,
16 against any potential liability arising under this sec-
17 tion relating to such hiring of the individual.

18 “(2) CIVIL PENALTY.—Any employer who is de-
19 termined, after notice and opportunity for mitigation
20 of the monetary penalty under subsection (e), to
21 have violated paragraph (1) shall be subject to a
22 civil penalty of \$10,000 for each violation and to an
23 administrative order requiring the return of any
24 amounts received in violation of such paragraph to

1 the employee or, if the employee cannot be located,
2 to the general fund of the Treasury.

3 “(g) GOVERNMENT CONTRACTS.—

4 “(1) CONTRACTORS AND RECIPIENTS.—When-
5 ever an employer who is a Federal contractor (mean-
6 ing an employer who holds a Federal contract,
7 grant, or cooperative agreement, or reasonably may
8 be expected to submit an offer for or be awarded a
9 government contract) is determined by the Secretary
10 to have violated this section on more than 3 occa-
11 sions or is convicted of a crime under this section,
12 the employer shall be considered for debarment from
13 the receipt of Federal contracts, grants, or coopera-
14 tive agreements in accordance with the procedures
15 and standards and for the periods prescribed by the
16 Federal Acquisition Regulation. However, any ad-
17 ministrative determination of liability for civil pen-
18 alty by the Secretary or the Attorney General shall
19 not be reviewable in any debarment proceeding.

20 “(2) INADVERTENT VIOLATIONS.—Inadvertent
21 violations of recordkeeping or verification require-
22 ments, in the absence of any other violations of this
23 section, shall not be a basis for determining that an
24 employer is a repeat violator for purposes of this
25 subsection.

1 “(3) OTHER REMEDIES AVAILABLE.—Nothing
2 in this subsection shall be construed to modify or
3 limit any remedy available to any agency or official
4 of the Federal Government for violation of any con-
5 tractual requirement to participate in the System, as
6 provided in the final rule relating to employment eli-
7 gibility verification published in the Federal Register
8 on November 14, 2008 (73 Fed. Reg. 67,651), or
9 any similar subsequent regulation.

10 “(h) PREEMPTION.—The provisions of this section
11 preempt any State or local law, ordinance, policy, or rule,
12 including any criminal or civil fine or penalty structure,
13 relating to the hiring, continued employment, or status
14 verification for employment eligibility purposes, of unau-
15 thorized aliens. A State, locality, municipality, or political
16 subdivision may exercise its authority over business licens-
17 ing and similar laws as a penalty for failure to use the
18 System.

19 “(i) DEPOSIT OF AMOUNTS RECEIVED.—Except as
20 otherwise specified, civil penalties collected under this sec-
21 tion shall be deposited by the Secretary into the Com-
22 prehensive Immigration Reform Trust Fund established
23 under section 6(a)(1) of the Border Security, Economic
24 Opportunity, and Immigration Modernization Act.

25 “(j) CHALLENGES TO VALIDITY OF THE SYSTEM.—

1 “(1) IN GENERAL.—Any right, benefit, or claim
2 not otherwise waived or limited pursuant to this sec-
3 tion is available in an action instituted in the United
4 States District Court for the District of Columbia,
5 but shall be limited to determinations of—

6 “(A) whether this section, or any regula-
7 tion issued to implement this section, violates
8 the Constitution of the United States; or

9 “(B) whether such a regulation issued by
10 or under the authority of the Secretary to im-
11 plement this section, is contrary to applicable
12 provisions of this section or was issued in viola-
13 tion of chapter 5 of title 5, United States Code.

14 “(2) DEADLINES FOR BRINGING ACTIONS.—
15 Any action instituted under this subsection must be
16 filed no later than 180 days after the date the chal-
17 lenged section or regulation described in subpara-
18 graph (A) or (B) of paragraph (1) becomes effective.
19 No court shall have jurisdiction to review any chal-
20 lenge described in subparagraph (B) after the time
21 period specified in this subsection expires.

22 “(k) CRIMINAL PENALTIES AND INJUNCTIONS FOR
23 PATTERN OR PRACTICE VIOLATIONS.—

24 “(1) PATTERN AND PRACTICE.—Any employer
25 who engages in a pattern or practice of knowing vio-

1 lations of subsection (a)(1)(A) or (a)(2) shall be
2 fined under title 18, United States Code, no more
3 than \$10,000 for each unauthorized alien with re-
4 spect to whom such violation occurs, imprisoned for
5 not more than 2 years for the entire pattern or prac-
6 tice, or both.

7 “(2) TERM OF IMPRISONMENT.—The maximum
8 term of imprisonment of a person convicted of any
9 criminal offense under the United States Code shall
10 be increased by 5 years if the offense is committed
11 as part of a pattern or practice of violations of sub-
12 section (a)(1)(A) or (a)(2).

13 “(3) ENJOINING OF PATTERN OR PRACTICE
14 VIOLATIONS.—Whenever the Secretary or the Attor-
15 ney General has reasonable cause to believe that an
16 employer is engaged in a pattern or practice of em-
17 ployment in violation of subsection (a)(1)(A) or
18 (a)(2), the Attorney General may bring a civil action
19 in the appropriate district court of the United States
20 requesting such relief, including a permanent or
21 temporary injunction, restraining order, or other
22 order against the employer, as the Secretary or At-
23 torney General deems necessary.

24 “(1) CRIMINAL PENALTIES FOR UNLAWFUL AND
25 ABUSIVE EMPLOYMENT.—

1 “(1) IN GENERAL.—Any person who, during
2 any 12-month period, knowingly employs or hires,
3 employs, recruits, or refers for a fee for employment
4 10 or more individuals within the United States who
5 are under the control and supervision of such per-
6 son—

7 “(A) knowing that the individuals are un-
8 authorized aliens; and

9 “(B) under conditions that violate section
10 5(a) of the Occupational Safety and Health Act
11 of 1970 (29 U.S.C. 654(a) (relating to occupa-
12 tional safety and health), section 6 or 7 of the
13 Fair Labor Standards Act of 1938 (29 U.S.C.
14 206 and 207) (relating to minimum wages and
15 maximum hours of employment), section 3142
16 of title 40, United States Code, (relating to re-
17 quired wages on construction contracts), or sec-
18 tions 6703 or 6704 of title 41, United States
19 Code, (relating to required wages on service
20 contracts),

21 shall be fined under title 18, United States Code, or
22 imprisoned for not more than 10 years, or both.

23 “(2) ATTEMPT AND CONSPIRACY.—Any person
24 who attempts or conspires to commit any offense

1 under this section shall be punished in the same
2 manner as a person who completes the offense.”.

3 (b) REPORT ON USE OF THE SYSTEM IN THE AGRI-
4 CULTURAL INDUSTRY.—Not later than 18 months after
5 the date of the enactment of this Act, the Secretary, in
6 consultation with the Secretary of Agriculture, shall sub-
7 mit a report to Congress that assesses implementation of
8 the Employment Verification System established under
9 section 274A(d) of the Immigration and Nationality Act,
10 as amended by subsection (a), in the agricultural industry,
11 including the use of such System technology in agriculture
12 industry hiring processes, user, contractor, and third-
13 party employer agent employment practices, timing and
14 logistics regarding employment verification and
15 reverification processes to meet agriculture industry prac-
16 tices, and identification of potential challenges and modi-
17 fications to meet the unique needs of the agriculture in-
18 dustry. Such report shall review—

19 (1) the modality of access, training and out-
20 reach, customer support, processes for further action
21 notices and secondary verifications for short-term
22 workers, monitoring, and compliance procedures for
23 such System;

24 (2) the interaction of such System with the
25 process to admit nonimmigrant workers pursuant to

1 section 218 or 218A of the Immigration and Nation-
2 ality Act (8 U.S.C. 1188 et seq.) and with enforce-
3 ment of the immigration laws; and

4 (3) the collaborative use of processes of other
5 Federal and State agencies that intersect with the
6 agriculture industry.

7 (c) REPORT ON IMPACT OF THE SYSTEM ON EM-
8 PLOYERS.—Not later than 18 months after the date of
9 the enactment of this Act, the Secretary shall submit to
10 Congress a report that assesses—

11 (1) the implementation of the Employment
12 Verification System established under section
13 274A(d) of the Immigration and Nationality Act, as
14 amended by subsection (a), by employers;

15 (2) any adverse impact on the revenues, busi-
16 ness processes, or profitability of employers required
17 to use such System; and

18 (3) the economic impact of such System on
19 small businesses.

20 (d) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
21 OF THE EFFECTS OF DOCUMENT REQUIREMENTS ON EM-
22 PLOYMENT AUTHORIZED PERSONS AND EMPLOYERS.—

23 (1) STUDY.—The Comptroller General of the
24 United States shall carry out a study of—

1 (A) the effects of the documentary require-
2 ments of section 274A of the Immigration and
3 Nationality Act, as amended by subsection (a),
4 on employers, naturalized United States citi-
5 zens, nationals of the United States, and indi-
6 viduals with employment authorized status; and

7 (B) the challenges such employers, citizens,
8 nationals, or individuals may face in obtaining
9 the documentation required under that section.

10 (2) REPORT.—Not later than 4 years after the
11 date of the enactment of this Act, the Comptroller
12 General shall submit to Congress a report containing
13 the findings of the study carried out under para-
14 graph (1). Such report shall include, at a minimum,
15 the following:

16 (A) An assessment of available information
17 regarding the number of working age nationals
18 of the United States and individuals who have
19 employment authorized status who lack docu-
20 ments required for employment by such section
21 274A.

22 (B) A description of the additional steps
23 required for individuals who have employment
24 authorized status and do not possess the docu-

1 ments required by such section 274A to obtain
2 such documents.

3 (C) A general assessment of the average fi-
4 nancial costs for individuals who have employ-
5 ment authorized status who do not possess the
6 documents required by such section 274A to ob-
7 tain such documents.

8 (D) A general assessment of the average
9 financial costs and challenged for employers
10 who have been required to participate in the
11 Employment Verification System established by
12 subsection (d) of such section 274A.

13 (E) A description of the barriers to indi-
14 viduals who have employment authorized status
15 in obtaining the documents required by such
16 section 274A, including barriers imposed by the
17 executive branch of the Government.

18 (F) Any particular challenges facing indi-
19 viduals who have employment authorized status
20 who are members of a federally recognized In-
21 dian tribe in complying with the provisions of
22 such section 274A.

23 (e) REPEAL OF PILOT PROGRAMS AND E-VERIFY
24 AND TRANSITION PROCEDURES.—

1 (1) REPEAL.—Sections 401, 402, 403, 404,
2 and 405 of the Illegal Immigration Reform and Im-
3 migrant Responsibility Act of 1996 (division C of
4 Public Law 104–208; 8 U.S.C. 1324a note) are re-
5 pealed.

6 (2) TRANSITION PROCEDURES.—

7 (A) CONTINUATION OF E-VERIFY PRO-
8 GRAM.—Notwithstanding the repeals made by
9 paragraph (1), the Secretary shall continue to
10 operate the E-Verify Program as described in
11 section 403 of the Illegal Immigration Reform
12 and Immigrant Responsibility Act of 1996 (di-
13 vision C of Public Law 104–208; 8 U.S.C.
14 1324a note), as in effect the minute before the
15 date of the enactment of this Act, until the
16 transition to the System described in section
17 274A(d) of the Immigration and Nationality
18 Act, as amended by subsection (a), is deter-
19 mined by the Secretary to be complete.

20 (B) TRANSITION TO THE SYSTEM.—Any
21 employer who was participating in the E-Verify
22 Program described in section 403 of the Illegal
23 Immigration Reform and Immigrant Responsi-
24 bility Act of 1996 (division C of Public Law
25 104–208; 8 U.S.C. 1324a note), as in effect the

1 minute before the date of the enactment of this
2 Act, shall participate in the System described in
3 section 274A(d) of the Immigration and Na-
4 tionality Act, as amended by subsection (a), to
5 the same extent and in the same manner that
6 the employer participated in such E-Verify Pro-
7 gram.

8 (3) CONSTRUCTION.—The repeal made by para-
9 graph (1) may not be construed to limit the author-
10 ity of the Secretary to allow or continue to allow the
11 participation in such System of employers who have
12 participated in such E-Verify Program, as in effect
13 on the minute before the date of the enactment of
14 this Act.

15 (f) CONFORMING AMENDMENT.—Section 274(a) (8
16 U.S.C. 1324(a)) is amended—

17 (1) by striking paragraph (3); and

18 (2) by redesignating paragraph (4) as para-
19 graph (3).

20 **SEC. 3102. INCREASING SECURITY AND INTEGRITY OF SO-**
21 **CIAL SECURITY CARDS.**

22 (a) FRAUD-RESISTANT, TAMPER-RESISTANT, WEAR-
23 RESISTANT, AND IDENTITY THEFT-RESISTANT SOCIAL
24 SECURITY CARDS.—

25 (1) ISSUANCE.—

1 (A) PRELIMINARY WORK.—Not later than
2 180 days after the date of the enactment of this
3 title, the Commissioner of Social Security shall
4 begin work to administer and issue fraud-resist-
5 ant, tamper-resistant, wear-resistant, and iden-
6 tity theft-resistant social security cards.

7 (B) COMPLETION.—Not later than 5 years
8 after the date of enactment of this title, the
9 Commissioner of Social Security shall issue only
10 social security cards determined to be fraud-re-
11 sistant, tamper-resistant, wear-resistant, and
12 identity theft-resistant social security cards.

13 (2) AMENDMENT.—

14 (A) IN GENERAL.—Section 205(c)(2)(G) of
15 the Social Security Act (42 U.S.C.
16 405(c)(2)(G)) is amended by striking the sec-
17 ond sentence and inserting the following: “The
18 social security card shall be fraud-resistant,
19 tamper-resistant, wear-resistant, and identity
20 theft-resistant.”.

21 (B) EFFECTIVE DATE.—The amendment
22 made by subparagraph (A) shall take effect on
23 the date that is 5 years after the date of the
24 enactment of this Act.

1 (3) AUTHORIZATION OF APPROPRIATION.—

2 There are authorized to be appropriated, from the
3 Comprehensive Immigration Reform Trust Fund es-
4 tablished under section 6(a)(1), such sums as may
5 be necessary to carry out this section and the
6 amendments made by this section.

7 (4) EMERGENCY DESIGNATION FOR CONGRES-
8 SIONAL ENFORCEMENT.—In the Senate, amounts
9 made available under this subsection are designated
10 as an emergency requirement pursuant to section
11 403(a) of S. Con. Res. 13 (111th Congress), the
12 concurrent resolution on the budget for fiscal year
13 2010.

14 (5) EMERGENCY DESIGNATION FOR STATUTORY
15 PAYGO.—Amounts made available under this sub-
16 section are designated as an emergency requirement
17 under section 4(g) of the Statutory Pay-As-You-Go
18 Act of 2010 (Public Law 111–139; 2 U.S.C.
19 933(g)).

20 (b) MULTIPLE CARDS.—Section 205(c)(2)(G) of the
21 Social Security Act (42 U.S.C. 405(c)(2)(G)), as amended
22 by subsection (a)(2), is amended—

23 (1) by inserting “(i)” after “(G)”; and

24 (2) by adding at the end the following:

1 “(ii) The Commissioner of Social Security shall re-
2 strict the issuance of multiple replacement social security
3 cards to any individual to 3 per year and 10 for the life
4 of the individual, except that the Commissioner may allow
5 for reasonable exceptions from the limits under this clause
6 on a case-by-case basis in compelling circumstances.”.

7 (c) CRIMINAL PENALTIES.—

8 (1) SOCIAL SECURITY FRAUD.—

9 (A) IN GENERAL.—Chapter 47 of title 18,
10 United States Code, is amended by inserting at
11 the end the following:

12 **“§ 1041. Social security fraud**

13 “Any person who—

14 “(1) knowingly possesses or uses a social secu-
15 rity account number or social security card knowing
16 that the number or card was obtained from the
17 Commissioner of Social Security by means of fraud
18 or false statement;

19 “(2) knowingly and falsely represents a number
20 to be the social security account number assigned by
21 the Commissioner of Social Security to him or her
22 or to another person, when such number is known
23 not to be the social security account number as-
24 signed by the Commissioner of Social Security to
25 him or her or to such other person;

1 “(3) knowingly, and without lawful authority,
2 buys, sells, or possesses with intent to buy or sell a
3 social security account number or a social security
4 card that is or purports to be a number or card
5 issued by the Commissioner of Social Security;

6 “(4) knowingly alters, counterfeits, forges, or
7 falsely makes a social security account number or a
8 social security card;

9 “(5) knowingly uses, distributes, or transfers a
10 social security account number or a social security
11 card knowing the number or card to be intentionally
12 altered, counterfeited, forged, falsely made, or sto-
13 len; or

14 “(6) without lawful authority, knowingly pro-
15 duces or acquires for any person a social security ac-
16 count number, a social security card, or a number
17 or card that purports to be a social security account
18 number or social security card,

19 shall be fined under this title, imprisoned not more than
20 5 years, or both.”.

21 (B) TABLE OF SECTIONS AMENDMENT.—

22 The table of sections for chapter 47 of title 18,
23 United States Code, is amended by adding after
24 the item relating to section 1040 the following:

“Sec. 1041. Social security fraud.”.

25 (2) INFORMATION DISCLOSURE.—

1 (A) IN GENERAL.—Notwithstanding any
2 other provision of law and subject to subpara-
3 graph (B), the Commissioner of Social Security
4 shall disclose for the purpose of investigating a
5 violation of section 1041 of title 18, United
6 States Code, or section 274A, 274B, or 274C
7 of the Immigration and Nationality Act (8
8 U.S.C. 1324a, 1324b, and 1324c), after receiv-
9 ing a written request from an officer in a super-
10 visory position or higher official of any Federal
11 law enforcement agency, the following records
12 of the Social Security Administration:

13 (i) Records concerning the identity,
14 address, location, or financial institution
15 accounts of the holder of a social security
16 account number or social security card.

17 (ii) Records concerning the applica-
18 tion for and issuance of a social security
19 account number or social security card.

20 (iii) Records concerning the existence
21 or nonexistence of a social security account
22 number or social security card.

23 (B) LIMITATION.—The Commissioner of
24 Social Security shall not disclose any tax return
25 or tax return information pursuant to subpara-

1 graph (A) except as authorized by section 6103
2 of the Internal Revenue Code of 1986.

3 **SEC. 3103. INCREASING SECURITY AND INTEGRITY OF IM-**
4 **MIGRATION DOCUMENTS.**

5 Not later than 1 year after the date of the enactment
6 of this Act, the Secretary shall submit a report to Con-
7 gress on the feasibility, advantages, and disadvantages of
8 including, in addition to a photograph, other biometric in-
9 formation on each employment authorization document
10 issued by the Department.

11 **SEC. 3104. RESPONSIBILITIES OF THE SOCIAL SECURITY**
12 **ADMINISTRATION.**

13 Title XI of the Social Security Act (42 U.S.C. 1301
14 et seq.) is amended by adding at the end the following
15 new part:

16 “PART E—EMPLOYMENT VERIFICATION
17 “RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL
18 SECURITY

19 “SEC. 1186. (a) CONFIRMATION OF EMPLOYMENT
20 VERIFICATION DATA.—As part of the employment
21 verification system established by the Secretary of Home-
22 land Security under the provisions of section 274A of the
23 Immigration and Nationality Act (8 U.S.C. 1324a) (in
24 this section referred to as the ‘System’), the Commissioner
25 of Social Security shall, subject to the provisions of section

1 274A(d) of the Immigration and Nationality Act (8 U.S.C.
2 1324a(d)), establish a reliable, secure method that, oper-
3 ating through the System and within the time periods
4 specified in section 274A(d) of such Act—

5 “(1) compares the name, date of birth, social
6 security account number, and available citizenship
7 information provided in an inquiry against such in-
8 formation maintained by the Commissioner in order
9 to confirm (or not confirm) the validity of the infor-
10 mation provided regarding an individual whose iden-
11 tity and employment eligibility must be confirmed;

12 “(2) determines the correspondence of the
13 name, date of birth, and number;

14 “(3) determines whether the name and number
15 belong to an individual who is deceased according to
16 the records maintained by the Commissioner;

17 “(4) determines whether an individual is a na-
18 tional of the United States, as defined in section
19 101(a)(22) of the Immigration and Nationality Act
20 (8 U.S.C. 1101(a)(22)); and

21 “(5) determines whether the individual has pre-
22 sented a social security account number that is not
23 valid for employment.

24 “(b) PROHIBITION.—The System shall not disclose or
25 release social security information to employers through

1 the confirmation system (other than such confirmation or
2 nonconfirmation, information provided by the employer to
3 the System, or the reason for the issuance of a further
4 action notice).”.

5 **SEC. 3105. IMPROVED PROHIBITION ON DISCRIMINATION**
6 **BASED ON NATIONAL ORIGIN OR CITIZEN-**
7 **SHIP STATUS.**

8 (a) IN GENERAL.—Section 274B(a) (8 U.S.C.
9 1324b(a)) is amended to read as follows:

10 “(a) PROHIBITION ON DISCRIMINATION BASED ON
11 NATIONAL ORIGIN OR CITIZENSHIP STATUS.—

12 “(1) PROHIBITION ON DISCRIMINATION GEN-
13 ERALLY.—It is an unfair immigration-related em-
14 ployment practice for a person, other entity, or em-
15 ployment agency, to discriminate against any indi-
16 vidual (other than an unauthorized alien defined in
17 section 274A(b)) because of such individual’s na-
18 tional origin or citizenship status, with respect to the
19 following:

20 “(A) The hiring of the individual for em-
21 ployment.

22 “(B) The verification of the individual’s
23 eligibility to work in the United States.

24 “(C) The discharging of the individual
25 from employment.

1 “(2) EXCEPTIONS.—Paragraph (1) shall not
2 apply to the following:

3 “(A) A person, other entity, or employer
4 that employs 3 or fewer employees, except for
5 an employment agency.

6 “(B) A person’s or entity’s discrimination
7 because of an individual’s national origin if the
8 discrimination with respect to that employer,
9 person, or entity and that individual is covered
10 under section 703 of the Civil Rights Act of
11 1964 (42 U.S.C. 2000e–2), unless the discrimi-
12 nation is related to an individual’s verification
13 of employment authorization.

14 “(C) Discrimination because of citizenship
15 status which—

16 “(i) is otherwise required in order to
17 comply with a provision of Federal, State,
18 or local law related to law enforcement;

19 “(ii) is required by Federal Govern-
20 ment contract; or

21 “(iii) the Secretary or Attorney Gen-
22 eral determines to be essential for an em-
23 ployer to do business with an agency or de-
24 partment of the Federal Government or a
25 State, local, or tribal government.

1 “(3) ADDITIONAL EXCEPTION PROVIDING
2 RIGHT TO PREFER EQUALLY QUALIFIED CITIZENS.—
3 Notwithstanding any other provision of this section,
4 it is not an unfair immigration-related employment
5 practice for an employer (as defined in section
6 274A(b)) to prefer to hire, recruit, or refer for a fee
7 an individual who is a citizen or national of the
8 United States over another individual who is an
9 alien if the 2 individuals are equally qualified.

10 “(4) UNFAIR IMMIGRATION-RELATED EMPLOY-
11 MENT PRACTICES RELATING TO THE SYSTEM.—It is
12 also an unfair immigration-related employment prac-
13 tice for a person, other entity, or employment agen-
14 cy—

15 “(A) to discharge or constructively dis-
16 charge an individual solely due to a further ac-
17 tion notice issued by the Employment
18 Verification System created by section 274A
19 until the administrative appeal described in sec-
20 tion 274A(d)(6) is completed;

21 “(B) to use the System with regard to any
22 person for any purpose except as authorized by
23 section 274A(d);

24 “(C) to use the System to reverify the em-
25 ployment authorization of a current employee,

1 including an employee continuing in employ-
2 ment, other than reverification upon expiration
3 of employment authorization, or as otherwise
4 authorized under section 274A(d) or by regula-
5 tion;

6 “(D) to use the System selectively for em-
7 ployees, except where authorized by law;

8 “(E) to fail to provide to an individual any
9 notice required in section 274A(d) within the
10 relevant time period;

11 “(F) to use the System to deny workers’
12 employment or post-employment benefits;

13 “(G) to misuse the System to discriminate
14 based on national origin or citizenship status;

15 “(H) to require an employee or prospective
16 employee to use any self-verification feature of
17 the System or provide, as a condition of appli-
18 cation or employment, any self-verification re-
19 sults;

20 “(I) to use an immigration status
21 verification system, service, or method other
22 than those described in section 274A for pur-
23 poses of verifying employment eligibility; or

24 “(J) to grant access to document
25 verification or System data, to any individual or

1 entity other than personnel authorized to have
2 such access, or to fail to take reasonable safe-
3 guards to protect against unauthorized loss,
4 use, alteration, or destruction of System data.

5 “(5) PROHIBITION OF INTIMIDATION OR RETAL-
6 IATION.—It is also an unfair immigration-related
7 employment practice for a person, other entity, or
8 employment agency to intimidate, threaten, coerce,
9 or retaliate against any individual—

10 “(A) for the purpose of interfering with
11 any right or privilege secured under this sec-
12 tion; or

13 “(B) because the individual intends to file
14 or has filed a charge or a complaint, testified,
15 assisted, or participated in any manner in an
16 investigation, proceeding, or hearing under this
17 section.

18 “(6) TREATMENT OF CERTAIN DOCUMENTARY
19 PRACTICES AS EMPLOYMENT PRACTICES.—A per-
20 son’s, other entity’s, or employment agency’s re-
21 quest, for purposes of verifying employment eligi-
22 bility, for more or different documents than are re-
23 quired under section 274A, or for specific docu-
24 ments, or refusing to honor documents tendered that

1 reasonably appear to be genuine shall be treated as
2 an unfair immigration-related employment practice.

3 “(7) EMPLOYMENT AGENCY DEFINED.—In this
4 section, the term ‘employment agency’ means any
5 employer, person, or entity regularly undertaking
6 with or without compensation to procure employees
7 for an employer or to procure for employees oppor-
8 tunities to work for an employer and includes an
9 agent of such employer, person, or entity.”.

10 (b) REFERRAL BY EEOC.—Section 274B(b) (8
11 U.S.C. 1324b(b)) is amended by adding at the end the
12 following:

13 “(3) REFERRAL BY EEOC.—The Equal Employ-
14 ment Opportunity Commission shall refer all matters
15 alleging immigration-related unfair employment
16 practices filed with the Commission, including those
17 alleging violations of paragraphs (1), (4), (5), and
18 (6) of subsection (a) to the Special Counsel for Im-
19 migration-Related Unfair Employment Practices of
20 the Department of Justice.”;

21 (c) AUTHORIZATION OF APPROPRIATIONS.—Section
22 274B(l)(3) (8 U.S.C. 1324b(l)(3)) is amended by striking
23 the period at the end and inserting “and an additional
24 \$40,000,000 for each of fiscal years 2014 through 2016.”.

25 (d) FINES.—

(1) IN GENERAL.—Section 274B(g)(2)(B) (8 U.S.C. 1324b(g)(2)(B)) is amended by striking clause (iv) and inserting the following:

“(iv) to pay any applicable civil penalties prescribed below, the amounts of which may be adjusted periodically to account for inflation as provided by law—

8 “(I) except as provided in sub-
9 clauses (II) through (IV), to pay a
10 civil penalty of not less than \$2,000
11 and not more than \$5,000 for each in-
12 dividual subjected to an unfair immi-
13 gration-related employment practice;

“(II) except as provided in sub-
clauses (III) and (IV), in the case of
an employer, person, or entity pre-
viously subject to a single order under
this paragraph, to pay a civil penalty
of not less than \$4,000 and not more
than \$10,000 for each individual sub-
jected to an unfair immigration-re-
lated employment practice;

23 “(III) except as provided in sub-
24 clause (IV), in the case of an em-
25 ployer, person, or entity previously

1 subject to more than 1 order under
2 this paragraph, to pay a civil penalty
3 of not less than \$8,000 and not more
4 than \$25,000 for each individual sub-
5 jected to an unfair immigration-re-
6 lated employment practice; and

7 “(IV) in the case of an unfair im-
8 migration-related employment practice
9 described in paragraphs (4) through
10 (6) of subsection (a), to pay a civil
11 penalty of not less than \$500 and not
12 more than \$2,000 for each individual
13 subjected to an unfair immigration-re-
14 lated employment practice.”.

15 (2) **EFFECTIVE DATE.**—The amendment made
16 by paragraph (1) shall take effect on the date that
17 is 1 year after the date of the enactment of this Act
18 and apply to violations occurring on or after such
19 date of enactment.

20 **SEC. 3106. RULEMAKING.**

21 (a) **INTERIM FINAL REGULATIONS.**—

22 (1) **IN GENERAL.**—Not later than 1 year after
23 the date of the enactment of this Act—

24 (A) the Secretary, shall issue regulations
25 implementing sections 3101 and 3104 and the

1 amendments made by such sections (except for
2 section 274A(d)(7) of the Immigration and Na-
3 tionality Act); and

4 (B) the Attorney General shall issue regu-
5 lations implementing section 274A(d)(7), as
6 added by section 3101, section 3105, and the
7 amendments made by such section.

8 (2) EFFECTIVE DATE.—Regulations issued pur-
9 suant to paragraph (1) shall be effective immediately
10 on an interim basis, but are subject to change and
11 revision after public notice and opportunity for a pe-
12 riod for public comment.

13 (b) FINAL REGULATIONS.—Within a reasonable time
14 after publication of the interim regulations under sub-
15 section (a), the Secretary, in consultation with the Com-
16 missioner of Social Security and the Attorney General,
17 shall publish final regulations implementing this subtitle.

18 **Subtitle B—Protecting United**
19 **States Workers**

20 **SEC. 3201. PROTECTIONS FOR VICTIMS OF SERIOUS VIOLA-**
21 **TIONS OF LABOR AND EMPLOYMENT LAW OR**
22 **CRIME.**

23 (a) IN GENERAL.—Section 101(a)(15)(U) (8 U.S.C.
24 1101(a)(15)(U)) is amended—

25 (1) in clause (i)—

1 (A) by amending subclause (I) to read as
2 follows:

3 “(I) the alien—

4 “(aa) has suffered substantial
5 physical or mental abuse or substan-
6 tial harm as a result of having been a
7 victim of criminal activity described in
8 clause (iii) or of a covered violation
9 described in clause (iv); or

10 “(bb) is a victim of criminal ac-
11 tivity described in clause (iii) or of a
12 covered violation described in clause
13 (iv) and would suffer extreme hard-
14 ship upon removal;”;

15 (B) in subclause (II), by inserting “, or a
16 covered violation resulting in a claim described
17 in clause (iv) that is not the subject of a frivo-
18 lous lawsuit by the alien” before the semicolon
19 at the end; and

20 (C) by amending subclauses (III) and (IV)
21 to read as follows:

22 “(III) the alien (or in the case of an
23 alien child who is younger than 16 years of
24 age, the parent, legal guardian, or next

1 friend of the alien) has been helpful, is
2 being helpful, or is likely to be helpful to—

3 “(aa) a Federal, State, or local
4 law enforcement official, a Federal,
5 State, or local prosecutor, a Federal,
6 State, or local judge, the Department
7 of Homeland Security, the Equal Em-
8 ployment Opportunity Commission,
9 the Department of Labor, or other
10 Federal or, State, or local authorities
11 investigating or prosecuting criminal
12 activity described in clause (iii); or

13 “(bb) any Federal, State, or local
14 governmental agency or judge inves-
15 tigating, prosecuting, or seeking civil
16 remedies for any cause of action,
17 whether criminal, civil, or administra-
18 tive, arising from a covered violation
19 described in clause (iv) and presents a
20 certification from such Federal, State,
21 or local governmental agency or judge
22 attesting that the alien has been help-
23 ful, is being helpful, or is likely to be
24 helpful to such agency in the inves-
25 tigation, prosecution, or adjudication

1 arising from a covered violation de-
2 scribed in clause (iv); and

3 “(IV) the criminal activity described
4 in clause (iii) or the covered violation de-
5 scribed in clause (iv)—

6 “(aa) violated the laws of the
7 United States; or

8 “(bb) occurred in the United
9 States (including Indian country and
10 military installations) or the terri-
11 tories and possessions of the United
12 States;”;

13 (2) in clause (ii)(II), by striking “and” at the
14 end;

15 (3) by moving clause (iii) 2 ems to the left;

16 (4) in clause (iii), by inserting “child abuse;”
17 after “stalking;”;

18 (5) by adding at the end the following:

19 “(iv) a covered violation referred to in this
20 clause is—

“(I) a serious violation involving 1 or more
of the following or any similar activity in viola-
tion of any Federal, State, or local law: serious
workplace abuse, exploitation, retaliation, or
violation of whistleblower protections;

1 “(II) a violation giving rise to a civil cause
2 of action under section 1595 of title 18, United
3 States Code; or

4 “(III) a violation resulting in the depriva-
5 tion of due process or constitutional rights.”.

6 (b) SAVINGS PROVISION.—Nothing in section
7 101(a)(15)(U)(iv)(I) of the Immigration and Nationality
8 Act, as added by subsection (a), may be construed as al-
9 tering the definition of retaliation or discrimination under
10 any other provision of law.

11 (c) TEMPORARY STAY OF REMOVAL.—Section 274A
12 (8 U.S.C. 1324a), as amended by section 3101, is further
13 amended—

14 (1) in subsection (e) by adding at the end the
15 following:

16 “(10) CONDUCT IN ENFORCEMENT ACTIONS.—
17 If the Secretary undertakes an enforcement action
18 at a facility about which a bona fide workplace claim
19 has been filed or is contemporaneously filed, or as
20 a result of information provided to the Secretary in
21 retaliation against employees for exercising their
22 rights related to a bona fide workplace claim, the
23 Secretary shall ensure that—

24 “(A) any aliens arrested or detained who
25 are necessary for the investigation or prosecu-

tion of a bona fide workplace claim or criminal activity (as described in subparagraph (T) or (U) of section 101(a)(15)) are not removed from the United States until after the Secretary—

“(i) notifies the appropriate law enforcement agency with jurisdiction over such violations or criminal activity; and

“(ii) provides such agency with the opportunity to interview such aliens;

“(B) no aliens entitled to a stay of removal or abeyance of removal proceedings under this section are removed; and

“(C) the Secretary shall stay the removal of an alien who—

“(i) has filed a claim regarding a covered violation described in clause (iv) of section 101(a)(15)(U) and is the victim of the same violations under an existing investigation;

“(ii) is a material witness in any pending or anticipated proceeding involving a bona fide workplace claim or civil rights claim; or

1 “(iii) has filed for relief under such
2 section if the alien is working with law en-
3 forcement as described in clause (i)(III) of
4 such section.”; and

5 (2) by adding at the end the following:

6 “(m) VICTIMS OF CRIMINAL ACTIVITY OR LABOR
7 AND EMPLOYMENT VIOLATIONS.—The Secretary of
8 Homeland Security may permit an alien to remain tempo-
9 rarily in the United States and authorize the alien to en-
10 gage in employment in the United States if the Secretary
11 determines that the alien—

12 “(1) has filed for relief under section
13 101(a)(15)(U); or

14 “(2)(A) has filed, or is a material witness to, a
15 bona fide claim or proceedings resulting from a cov-
16 ered violation (as defined in section
17 101(a)(15)(U)(iv)); and

18 “(B) has been helpful, is being helpful, or is
19 likely to be helpful, in the investigation, prosecution
20 of, or pursuit of civil remedies related to the claim
21 arising from a covered violation, to—

22 “(i) a Federal, State, or local law enforce-
23 ment official;

24 “(ii) a Federal, State, or local prosecutor;

25 “(iii) a Federal, State, or local judge;

1 “(iv) the Department of Homeland Secu-
2 rity;

3 “(v) the Equal Employment Opportunity
4 Commission; or

5 “(vi) the Department of Labor.”.

6 (d) CONFORMING AMENDMENTS.—Section 214(p) (8
7 U.S.C. 1184(p)) is amended—

8 (1) in paragraph (1), by striking “in section
9 101(a)(15)(U)(iii).” both places it appears and in-
10 serting “in clause (iii) of section 101(a)(15)(U) or
11 investigating, prosecuting, or seeking civil remedies
12 for claims resulting from a covered violation de-
13 scribed in clause (iv) of such section.”; and

14 (2) in the first sentence of paragraph (6)—

15 (A) by striking “in section
16 101(a)(15)(U)(iii)” and inserting “in clause
17 (iii) of section 101(a)(15)(U) or claims result-
18 ing from a covered violation described in clause
19 (iv) of such section”; and

20 (B) by inserting “or claim arising from a
21 covered violation” after “prosecution of such
22 criminal activity”.

23 (e) MODIFICATION OF LIMITATION ON AUTHORITY
24 TO ADJUST STATUS FOR VICTIMS OF CRIMES.—Section
25 245(m)(1) (8 U.S.C. 1255(m)(1)) is amended, in the mat-

1 ter before subparagraph (A), by inserting “or an investiga-
2 tion or prosecution regarding a workplace or civil rights
3 claim” after “prosecution”.

4 (f) EXPANSION OF LIMITATION ON SOURCES OF IN-
5 FORMATION THAT MAY BE USED TO MAKE ADVERSE
6 DETERMINATIONS.—

7 (1) IN GENERAL.—Section 384(a)(1) of the Il-
8 legal Immigration Reform and Immigrant Responsi-
9 bility Act of 1996 (8 U.S.C. 1367(a)(1)) is amend-
10 ed—

11 (A) in each of subparagraphs (A) through
12 (D), by striking the comma at the end and in-
13 serting a semicolon;

14 (B) subparagraph (E), by striking “the
15 criminal activity,” and inserting “abuse and the
16 criminal activity or bona fide workplace claim
17 (as defined in subsection (e));”;

18 (C) in subparagraph (F), by striking “, the
19 trafficker or perpetrator,” and inserting “), the
20 trafficker or perpetrator; or”; and

21 (D) by inserting after subparagraph (F)
22 the following:

23 “(G) the alien’s employer,”.

1 (2) WORKPLACE CLAIM DEFINED.—Section 384
2 of such Act (8 U.S.C. 1367) is amended by adding
3 at the end the following:

4 “(e) WORKPLACE CLAIMS.—

5 “(1) WORKPLACE CLAIMS DEFINED.—

6 “(A) IN GENERAL.—In subsection (a)(1),
7 the term ‘workplace claim’ means any claim, pe-
8 tition, charge, complaint, or grievance filed
9 with, or submitted to, a Federal, State, or local
10 agency or court, relating to the violation of ap-
11 plicable Federal, State, or local labor or employ-
12 ment laws.

13 “(B) CONSTRUCTION.—Subparagraph (A)
14 may not be construed to alter what constitutes
15 retaliation or discrimination under any other
16 provision of law.

17 “(2) PENALTY FOR FALSE CLAIMS.—Any per-
18 son who knowingly presents a false or fraudulent
19 claim to a law enforcement official in relation to a
20 covered violation described in section
21 101(a)(15)(U)(iv) of the Immigration and Nation-
22 ality Act for the purpose of obtaining a benefit
23 under this section shall be subject to a civil penalty
24 of not more than \$1,000.

1 “(3) LIMITATION ON STAY OF ADVERSE DETER-
2 MINATIONS.—In the case of an alien applying for
3 status under section 101(a)(15)(U) of the Immigra-
4 tion and Nationality Act and seeking relief under
5 that section, the prohibition on adverse determina-
6 tions under subsection (a) shall expire on the date
7 that the alien’s application for status under such
8 section is denied and all opportunities for appeal of
9 the denial have been exhausted.”.

10 (g) REMOVAL PROCEEDINGS.—Section 239(e) (8
11 U.S.C. 1229(e)) is amended—

12 (1) in paragraph (1)—

13 (A) by striking “In cases where” and in-
14 serting “If”; and

15 (B) by striking “paragraph (2),” and in-
16 serting “paragraph (2) or as a result of infor-
17 mation provided to the Secretary of Homeland
18 Security in retaliation against individuals for
19 exercising or attempting to exercise their em-
20 ployment rights or other legal rights,”; and

21 (2) in paragraph (2), by adding at the end the
22 following:

23 “(C) At a facility about which a bona fide
24 workplace claim has been filed or is contem-
25 poraneously filed.”.

1 **SEC. 3202. EMPLOYMENT VERIFICATION SYSTEM EDU-**
2 **CATION FUNDING.**

3 (a) DISPOSITION OF CIVIL PENALTIES.—Penalties
4 collected under subsections (e)(4) and (f)(3) of section
5 274A of the Immigration and Nationality Act, amended
6 by section 3101, shall be deposited, as offsetting receipts,
7 into the Comprehensive Immigration Reform Trust Fund
8 established under section 6(a)(1).

9 (b) EXPENDITURES.—Amounts deposited into the
10 Trust Fund under subsection (a) shall be made available
11 to the Secretary and the Attorney General to provide edu-
12 cation to employers and employees regarding the require-
13 ments, obligations, and rights under the Employment
14 Verification System.

15 (c) DETERMINATION OF BUDGETARY EFFECTS.—

16 (1) EMERGENCY DESIGNATION FOR CONGRES-
17 SIONAL ENFORCEMENT.—In the Senate, amounts
18 made available under this section are designated as
19 an emergency requirement pursuant to section
20 403(a) of S. Con. Res. 13 (111th Congress), the
21 concurrent resolution on the budget for fiscal year
22 2010.

23 (2) EMERGENCY DESIGNATION FOR STATUTORY
24 PAYGO.—Amounts made available under this section
25 are designated as an emergency requirement under

1 section 4(g) of the Statutory Pay-As-You-Go Act of
2 2010 (Public Law 111–139; 2 U.S.C. 933(g)).

3 **SEC. 3203. DIRECTIVE TO THE UNITED STATES SEN-**
4 **TENCING COMMISSION.**

5 (a) IN GENERAL.—Pursuant to its authority under
6 section 994 of title 28, United States Code, and in accord-
7 ance with subsection (b), the United States Sentencing
8 Commission shall promulgate sentencing guidelines or
9 amend existing sentencing guidelines to modify, if appro-
10 priate, the penalties imposed on persons convicted of of-
11 fenses under—

12 (1) section 274A of the Immigration and Na-
13 tionality Act (8 U.S.C. 1324a), as amended by sec-
14 tion 3101;

15 (2) section 16 of the Fair Labor Standards Act
16 of 1938 (29 U.S.C. 216); and

17 (3) any other Federal law covering similar con-
18 duct.

19 (b) REQUIREMENTS.—In carrying out subsection (a),
20 the Sentencing Commission shall provide sentencing en-
21 hancements for any person convicted of an offense de-
22 scribed in subsection (a) if such offense involves—

23 (1) the intentional confiscation of identification
24 documents;

25 (2) corruption, bribery, extortion, or robbery;

- 1 (3) sexual abuse;
- 2 (4) serious bodily injury;
- 3 (5) an intent to defraud; or
- 4 (6) a pattern of conduct involving multiple vio-
- 5 lations of law that—
- 6 (A) creates, through knowing and inten-
- 7 tional conduct, a risk to the health or safety of
- 8 any victim; or
- 9 (B) denies payments due to victims for
- 10 work completed.

11 **Subtitle C—Other Provisions**

12 **SEC. 3301. FUNDING.**

13 (a) ESTABLISHMENT OF THE INTERIOR ENFORCE-

14 MENT ACCOUNT.—There is hereby established in the

15 Treasury of the United States an account which shall be

16 known as the Interior Enforcement Account.

17 (b) APPROPRIATIONS.—There are authorized to be

18 appropriated to the Interior Enforcement Account

19 \$1,000,000,000 to carry out this title and the amend-

20 ments made by this title, including the following appro-

21 priations:

22 (1) In each of the 5 years beginning on the date

23 of the enactment of this Act, the appropriations nec-

24 essary to increase to a level not less than 5,000, by

25 the end of such 5-year period, the total number of

1 personnel of the Department assigned exclusively or
2 principally to an office or offices in U.S. Citizenship
3 and Immigration Services and U.S. Immigration and
4 Customs Enforcement (and consistent with the mis-
5 sions of such agencies), dedicated to administering
6 the System, and monitoring and enforcing compli-
7 ance with sections 274A, 274B, and 274C of the
8 Immigration and Nationality Act (8 U.S.C. 1324a,
9 1324b, and 1324c), including compliance with the
10 requirements of the Electronic Verification System
11 established under section 274A(d) of the Immigra-
12 tion and Nationality Act (8 U.S.C. 1324a(d)), as
13 amended by section 3101. Such personnel shall per-
14 form compliance and monitoring functions, including
15 the following:

16 (A) Verify compliance of employers partici-
17 pating in such System with the requirements
18 for participation that are prescribed by the Sec-
19 retary.

20 (B) Monitor such System for multiple uses
21 of social security account numbers and immi-
22 gration identification numbers that could indi-
23 cate identity theft or fraud.

24 (C) Monitor such System to identify dis-
25 criminatory or unfair practices.

1 (D) Monitor such System to identify em-
2 ployers who are not using such System prop-
3 erly, including employers who fail to make
4 available appropriate records with respect to
5 their queries and any notices of confirmation,
6 nonconfirmation, or further action.

7 (E) Identify instances in which an em-
8 ployee alleges that an employer violated the em-
9 ployee's privacy or civil rights, or misused such
10 System, and create procedures for an employee
11 to report such an allegation.

12 (F) Analyze and audit the use of such Sys-
13 tem and the data obtained through such System
14 to identify fraud trends, including fraud trends
15 across industries, geographical areas, or em-
16 ployer size.

17 (G) Analyze and audit the use of such Sys-
18 tem and the data obtained through such System
19 to develop compliance tools as necessary to re-
20 spond to changing patterns of fraud.

21 (H) Provide employers with additional
22 training and other information on the proper
23 use of such System, including training related
24 to privacy and employee rights.

1 (I) Perform threshold evaluation of cases
2 for referral to the Special Counsel for Immigra-
3 tion-Related Unfair Employment Practices of
4 the Department of Justice or the Equal Em-
5 ployment Opportunity Commission, and other
6 officials or agencies with responsibility for en-
7 forcing anti-discrimination, civil rights, privacy,
8 or worker protection laws, as may be appro-
9 priate.

10 (J) Any other compliance and monitoring
11 activities that the Secretary determines are nec-
12 essary to ensure the functioning of such Sys-
13 tem.

14 (K) Investigate identity theft and fraud de-
15 tected through such System and undertake the
16 necessary enforcement or referral actions.

17 (L) Investigate use of or access to fraudu-
18 lent documents and undertake the necessary en-
19 forcement actions.

20 (M) Perform any other investigations that
21 the Secretary determines are necessary to en-
22 sure the lawful functioning of such System, and
23 undertake any enforcement actions necessary as
24 a result of such investigations.

1 (2) The appropriations necessary to acquire, in-
2 stall, and maintain technological equipment nec-
3 essary to support the functioning of such System
4 and the connectivity between U.S. Citizenship and
5 Immigration Services and U.S. Immigration and
6 Customs Enforcement, the Department of Justice,
7 and other agencies or officials with respect to the
8 sharing of information to support such System and
9 related immigration enforcement actions.

10 (3) The appropriations necessary to establish a
11 robust redress process for employees who wish to ap-
12 peal contested nonconfirmations to ensure the accu-
13 racy and fairness of such System.

14 (4) The appropriations necessary to provide a
15 means by which individuals may access their own
16 employment authorization data to ensure the accu-
17 racy of such data, independent of an individual's em-
18 ployer.

19 (5) To carry out the identity authentication
20 mechanisms described in section 274A(c)(1)(F) of
21 the Immigration and Nationality Act, as amended by
22 section 3101(a).

23 (6) The appropriations necessary for the Office
24 for Civil Rights and Civil Liberties and the Office of

1 Privacy of the Department to perform the respon-
2 sibilities of such Offices related to such System.

3 (7) The appropriations necessary to make
4 grants to States to support the States in assisting
5 the Federal Government in carrying out the provi-
6 sions of this title and the amendments made by this
7 title.

8 (c) ESTABLISHMENT OF REIMBURSABLE AGREE-
9 MENT BETWEEN THE DEPARTMENT OF HOMELAND SE-
10 CURITY AND THE SOCIAL SECURITY ADMINISTRATION.—

11 (1) IN GENERAL.—Effective for fiscal years be-
12 ginning on or after the date of enactment of this
13 Act, the Secretary and the Commissioner of Social
14 Security shall enter into and maintain an agreement
15 that—

16 (A) provides funds to the Commissioner
17 for the full costs of the responsibilities of the
18 Commissioner under this section, including—

19 (i) acquiring, installing, and maintain-
20 ing technological equipment and systems
21 necessary for the fulfillment of the respon-
22 sibilities of the Commissioner under this
23 section; and

24 (ii) responding to individuals who con-
25 test a further action notice or provided by

1 the employment verification system estab-
2 lished under section 274A of the Immigra-
3 tion and Nationality Act, as amended by
4 section 3101;

5 (B) provides such funds quarterly in ad-
6 vance of the applicable quarter based on esti-
7 mating methodology agreed to by the Commis-
8 sioner and the Secretary; and

9 (C) requires an annual accounting and rec-
10 onciliation of the actual costs incurred and the
11 funds provided under the agreement which shall
12 be reviewed by the Office of the Inspector Gen-
13 eral of the Social Security Administration and
14 the Department.

15 (d) AUTHORIZATION OF APPROPRIATIONS TO THE
16 ATTORNEY GENERAL.—There are authorized to be appro-
17 priated to the Attorney General such sums as may be nec-
18 essary to carry out the provisions of this title and the
19 amendments made by this title, including enforcing com-
20 pliance with section 274B of the Immigration and Nation-
21 ality Act, as amended by section 3105.

22 (e) AUTHORIZATION OF APPROPRIATIONS TO THE
23 SECRETARY OF STATE.—There are authorized to be ap-
24 propriated to the Secretary of State such sums as may

1 be necessary to carry out the provisions of this title and
2 the amendments made by this title.

3 (f) DETERMINATION OF BUDGETARY EFFECTS.—

4 (1) EMERGENCY DESIGNATION FOR CONGRES-
5 SIONAL ENFORCEMENT.—In the Senate, amounts
6 made available under this section are designated as
7 an emergency requirement pursuant to section
8 403(a) of S. Con. Res. 13 (111th Congress), the
9 concurrent resolution on the budget for fiscal year
10 2010.

11 (2) EMERGENCY DESIGNATION FOR STATUTORY
12 PAYGO.—Amounts made available under this section
13 are designated as an emergency requirement under
14 section 4(g) of the Statutory Pay-As-You-Go Act of
15 2010 (Public Law 111–139; 2 U.S.C. 933(g)).

16 **SEC. 3302. EFFECTIVE DATE.**

17 Except as otherwise specifically provided, this title
18 and the amendments made by this title shall take effect
19 on the date of the enactment of this Act.

20 **SEC. 3303. MANDATORY EXIT SYSTEM.**

21 (a) ESTABLISHMENT.—Not later than December 31,
22 2015, the Secretary shall establish a mandatory exit data
23 system that shall include a requirement for the collection
24 of data from machine-readable visas, passports, and other

1 travel and entry documents for all categories of aliens who
2 are exiting from air and sea ports of entry.

3 (b) INTEGRATION AND INTEROPERABILITY.—

4 (1) INTEGRATION OF DATA SYSTEM.—The Sec-
5 retary shall fully integrate all data from databases
6 and data systems that process or contain informa-
7 tion on aliens, which are maintained by—

8 (A) the Department, at—

9 (i) the U.S. Immigration and Customs
10 Enforcement;

11 (ii) the U.S. Customs and Border
12 Protection; and

13 (iii) the U.S. Citizenship and Immi-
14 gration Services;

15 (B) the Department of Justice, at the Ex-
16 ecutive Office for Immigration Review; and

17 (C) the Department of State, at the Bu-
18 reau of Consular Affairs.

19 (2) INTEROPERABLE COMPONENT.—The fully
20 integrated data system under paragraph (1) shall be
21 an interoperable component of the exit data system.

22 (3) INTEROPERABLE DATA SYSTEM.—The Sec-
23 retary shall fully implement an interoperable elec-
24 tronic data system to provide current and immediate
25 access to information in the databases of Federal

1 law enforcement agencies and the intelligence com-
2 munity that is relevant to determine—

3 (A) whether to issue a visa; or

4 (B) the admissibility or deportability of an
5 alien.

6 (4) TRAINING.—The Secretary shall establish
7 ongoing training modules on immigration law to im-
8 prove adjudications at United States ports of entry,
9 consulates, and embassies.

10 **SEC. 3304. IDENTITY-THEFT RESISTANT MANIFEST INFOR-**
11 **MATION FOR PASSENGERS, CREW, AND NON-**
12 **CREW ONBOARD DEPARTING AIRCRAFT AND**
13 **VESSELS.**

14 (a) DEFINITIONS.—Except as otherwise specifically
15 provided, in this section:

16 (1) IDENTITY-THEFT RESISTANT COLLECTION
17 LOCATION.—The term “identity-theft resistant col-
18 lection location” means a location within an airport
19 or seaport—

20 (A) within the path of the departing alien,
21 such that the alien would not need to signifi-
22 cantly deviate from that path to comply with
23 exit requirements at which air or vessel carrier
24 employees, as applicable, either presently or

1 routinely are available if an alien needs proc-
2 essing assistance; and

3 (B) which is equipped with technology that
4 can securely collect and transmit identity-theft
5 resistant departure information to the Depart-
6 ment.

7 (2) US-VISIT.—The term “US-VISIT” means
8 the United States-Visitor and Immigrant Status In-
9 dicator Technology system.

10 (b) IDENTITY THEFT RESISTANT MANIFEST INFOR-
11 MATION.—

12 (1) PASSPORT OR VISA COLLECTION REQUIRE-
13 MENT.—Except as provided in subsection (c), an ap-
14 propriate official of each commercial aircraft or ves-
15 sel departing from the United States to any port or
16 place outside the United States shall ensure trans-
17 mission to U.S. Customs and Border Protection of
18 identity-theft resistant departure manifest informa-
19 tion covering alien passengers, crew, and non-crew.
20 Such identity-theft resistant departure manifest in-
21 formation—

22 (A) shall be transmitted to U.S. Customs
23 and Border Protection at the place and time
24 specified in paragraph (3) by means approved
25 by the Secretary; and

1 (B) shall set forth the information speci-
2 fied in paragraph (4) or other information as
3 required by the Secretary.

4 (2) MANNER OF COLLECTION.—Carriers board-
5 ing alien passengers, crew, and non-crew subject to
6 the requirement to provide information upon depart-
7 ure for US-VISIT processing shall collect identity-
8 theft resistant departure manifest information from
9 each alien at an identity-theft resistant collection lo-
10 cation at the airport or seaport before boarding that
11 alien on transportation for departure from the
12 United States, at a time as close to the originally
13 scheduled departure of that passenger's aircraft or
14 sea vessel as practicable.

15 (3) TIME AND MANNER OF SUBMISSION.—

16 (A) IN GENERAL.—The appropriate official
17 specified in paragraph (1) shall ensure trans-
18 mission of the identity-theft resistant departure
19 manifest information required and collected
20 under paragraphs (1) and (2) to the Data Cen-
21 ter or Headquarters of U.S. Customs and Bor-
22 der Protection, or such other data center as
23 may be designated.

24 (B) TRANSMISSION.—The biometric depart-
25 ure information may be transmitted to the De-

1 partment over any means of communication au-
2 thorized by the Secretary for the transmission
3 of other electronic manifest information con-
4 taining personally identifiable information and
5 under transmission standards currently applica-
6 ble to other electronic manifest information.

7 (C) SUBMISSION ALONG WITH OTHER IN-
8 FORMATION.—Files containing the identity-
9 theft resistant departure manifest informa-
10 tion—

11 (i) may be sent with other electronic
12 manifest data prior to departure or may be
13 sent separately from any topically related
14 electronic manifest data; and

15 (ii) may be sent in batch mode.

16 (4) INFORMATION REQUIRED.—The identity-
17 theft resistant departure information required under
18 paragraphs (1) through (3) for each covered pas-
19 senger or crew member shall contain alien data from
20 machine-readable visas, passports, and other travel
21 and entry documents issued to the alien.

22 (c) EXCEPTION.—The identity-theft resistant depar-
23 ture information specified in this section is not required
24 for any alien active duty military personnel traveling as

1 passengers on board a departing Department of Defense
2 commercial chartered aircraft.

3 (d) CARRIER MAINTENANCE AND USE OF IDENTITY-
4 THEFT RESISTANT DEPARTURE MANIFEST INFORMA-
5 TION.—Carrier use of identity-theft resistant departure
6 manifest information for purposes other than as described
7 in standards set by the Secretary is prohibited. Carriers
8 shall immediately notify the Chief Privacy Officer of the
9 Department in writing in the event of unauthorized use
10 or access, or breach, of identity-theft resistant departure
11 manifest information.

12 (e) COLLECTION AT SPECIFIED LOCATION.—If the
13 Secretary determines that an air or vessel carrier has not
14 adequately complied with the provisions of this section, the
15 Secretary may, in the Secretary's discretion, require the
16 air or vessel carrier to collect identity-theft resistant de-
17 parture manifest information at a specific location prior
18 to the issuance of a boarding pass or other document on
19 the international departure, or the boarding of crew, in
20 any port through which the carrier boards aliens for inter-
21 national departure under the supervision of the Secretary
22 for such period as the Secretary considers appropriate to
23 ensure the adequate collection and transmission of biomet-
24 ric departure manifest information.

1 (f) FUNDING.—There shall be appropriated to the In-
2 terior Enforcement Account \$500,000,000 to reimburse
3 carriers for their reasonable actual expenses in carrying
4 out their duties as described in this section.

5 (g) DETERMINATION OF BUDGETARY EFFECTS.—

6 (1) EMERGENCY DESIGNATION FOR CONGRES-
7 SIONAL ENFORCEMENT.—In the Senate, amounts
8 made available under this section are designated as
9 an emergency requirement pursuant to section
10 403(a) of S. Con. Res. 13 (111th Congress), the
11 concurrent resolution on the budget for fiscal year
12 2010.

13 (2) EMERGENCY DESIGNATION FOR STATUTORY
14 PAYGO.—Amounts made available under this section
15 are designated as an emergency requirement under
16 section 4(g) of the Statutory Pay-As-You-Go Act of
17 2010 (Public Law 111–139; 2 U.S.C. 933(g)).

18 **SEC. 3305. PROFILING.**

19 (a) PROHIBITION.—In making routine or sponta-
20 neous law enforcement decisions, such as ordinary traffic
21 stops, Federal law enforcement officers may not use race
22 or ethnicity to any degree, except that officers may rely
23 on race and ethnicity if a specific suspect description ex-
24 ists.

25 (b) EXCEPTIONS.—

1 (1) SPECIFIC INVESTIGATION.—In conducting
2 activities in connection with a specific investigation,
3 Federal law enforcement officers may consider race
4 and ethnicity only to the extent that there is trust-
5 worthy information, relevant to the locality or time
6 frame, that links persons of a particular race or eth-
7 nicity to an identified criminal incident, scheme, or
8 organization. This standard applies even where the
9 use of race or ethnicity might otherwise be lawful.

10 (2) NATIONAL SECURITY.—In investigating or
11 preventing threats to national security or other cata-
12 strophic events (including the performance of duties
13 related to air transportation security), or in enforce-
14 ing laws protecting the integrity of the Nation’s bor-
15 ders, Federal law enforcement officers may not con-
16 sider race or ethnicity except to the extent permitted
17 by the Constitution and laws of the United States.

18 (3) DEFINED TERM.—In this section, the term
19 “Federal law enforcement officer” means any offi-
20 cer, agent, or employee of the United States author-
21 ized by law or by a Government agency to engage
22 in or supervise the prevention, detection, investiga-
23 tion, or prosecution of any violation of Federal law.

24 (c) STUDY AND REGULATIONS.—

1 (1) DATA COLLECTION.—Not later than 180
2 days after the date of the enactment of this Act, the
3 Secretary shall begin collecting data regarding the
4 individualized immigration enforcement activities of
5 covered Department officers.

6 (2) STUDY.—Not later than 180 days after
7 data collection under paragraph (1) commences, the
8 Secretary shall complete a study analyzing the data.

9 (3) REGULATIONS.—Not later than 90 days
10 after the date the study required by paragraph (2)
11 is completed, the Secretary, in consultation with the
12 Attorney General, shall issue regulations regarding
13 the use of race, ethnicity, and any other suspect
14 classifications the Secretary deems appropriate by
15 covered Department officers.

16 (4) REPORTS.—Not later than 30 days after
17 completion of the study required by paragraph (2),
18 the Secretary shall submit the study to—

19 (A) the Committee on Homeland Security
20 and Governmental Affairs of the Senate;

21 (B) the Committee on Homeland Security
22 of the House of Representatives;

23 (C) the Committee on Appropriations of
24 the Senate;

1 (D) the Committee on Appropriations of
2 the House of Representatives;

3 (E) the Committee on the Judiciary of the
4 Senate; and

5 (F) the Committee on the Judiciary of the
6 House of Representatives.

7 (5) DEFINED TERM.—In this subsection, the
8 term “covered Department officer” means any offi-
9 cer, agent, or employee of United States Customs
10 and Border Protection, United States Immigration
11 and Customs Enforcement, or the Transportation
12 Security Administration.

13 **Subtitle D—Asylum and Refugee**
14 **Provisions**

15 **SEC. 3401. TIME LIMITS AND EFFICIENT ADJUDICATION OF**
16 **GENUINE ASYLUM CLAIMS.**

17 Section 208(a)(2) (8 U.S.C. 1158(a)(2)) is amend-
18 ed—

19 (1) in subparagraph (A), by inserting “or the
20 Secretary of Homeland Security” after “Attorney
21 General” both places such term appears;

22 (2) by striking subparagraphs (B) and (D);

23 (3) by redesignating subparagraph (C) as sub-
24 paragraph (B);

(4) in subparagraph (B), as redesignated, by striking “subparagraph (D)” and inserting “subparagraphs (C) and (D)”; and

4 (5) by inserting after subparagraph (B), as re-
5 designated, the following:

6 “(C) CHANGED CIRCUMSTANCES.—Not-
7 withstanding subparagraph (B), an application
8 for asylum of an alien may be considered if the
9 alien demonstrates, to the satisfaction of the
10 Attorney General or the Secretary of Homeland
11 Security, the existence of changed cir-
12 cumstances that materially affect the appli-
13 cant’s eligibility for asylum.

“(D) MOTION TO REOPEN CERTAIN MERI-
TORIOUS CLAIMS.—Notwithstanding subpara-
graph (B) or section 240(c)(7), an alien may
file a motion to reopen an asylum claim during
the 2-year period beginning on the date of the
enactment of the Border Security, Economic
Opportunity, and Immigration Modernization
Act if the alien—

“(i) was denied asylum based solely upon a failure to meet the 1-year application filing deadline in effect on the date on which the application was filed;

1 “(ii) was granted withholding of re-
2 moval pursuant to section 241(b)(3) and
3 has not obtained lawful permanent resi-
4 dence in the United States pursuant to any
5 other provision of law;

6 “(iii) is not subject to the safe third
7 country exception under subparagraph (A)
8 or a bar to asylum under subsection (b)(2)
9 and should not be denied asylum as a mat-
10 ter of discretion; and

11 “(iv) is physically present in the
12 United States when the motion is filed.”.

13 **SEC. 3402. REFUGEE FAMILY PROTECTIONS.**

14 (a) CHILDREN OF REFUGEE OR ASYLEE SPOUSES
15 AND CHILDREN.—A child of an alien who qualifies for ad-
16 mission as a spouse or child under section 207(c)(2)(A)
17 or 208(b)(3) of the Immigration and Nationality Act (8
18 U.S.C. 1157(c)(2)(A) and 1158(b)(3)) shall be entitled to
19 the same status as such alien if the child—

20 (1) is accompanying or following to join such
21 alien; and

22 (2) is otherwise eligible under section
23 207(c)(2)(A) or 208(b)(3) of the Immigration and
24 Nationality Act.

1 **SEC. 3403. CLARIFICATION ON DESIGNATION OF CERTAIN**
2 **REFUGEES.**

3 Section 207(c)(1) (8 U.S.C. 1157(c)(1)) is amend-
4 ed—

5 (1) by inserting “(A)” before “Subject to the
6 numerical limitations”; and

7 (2) by adding at the end the following:

8 “(B)(i) The President, upon a recommendation of the
9 Secretary of State made in consultation with the Secretary
10 of Homeland Security, and after appropriate consultation,
11 may designate specifically defined groups of aliens—

12 “(I) whose resettlement in the United States is
13 justified by humanitarian concerns or is otherwise in
14 the national interest; and

15 “(II) who—

16 “(aa) share common characteristics that
17 identify them as targets of persecution on ac-
18 count of race, religion, nationality, membership
19 in a particular social group, or political opinion;
20 or

21 “(bb) having been identified as targets as
22 described in item (aa), share a common need
23 for resettlement due to a specific vulnerability.

24 “(ii) An alien who establishes membership in a group
25 designated under clause (i) to the satisfaction of the Sec-
26 retary of Homeland Security shall be considered a refugee

1 for purposes of admission as a refugee under this section
2 unless the Secretary determines that such alien ordered,
3 incited, assisted, or otherwise participated in the persecu-
4 tion of any person on account of race, religion, nationality,
5 membership in a particular social group, or political opin-
6 ion.

7 “(iii) A designation under clause (i) is for purposes
8 of adjudicatory efficiency and may be revoked by the
9 President at any time after notification to Congress.

10 “(iv) Categories of aliens established under section
11 599D of the Foreign Operations, Export Financing, and
12 Related Programs Appropriations Act, 1990 (Public Law
13 101–167; 8 U.S.C. 1157 note)—

14 “(I) shall be designated under clause (i) until
15 the end of the first fiscal year commencing after the
16 date of the enactment of the Border Security, Eco-
17 nomic Opportunity, and Immigration Modernization
18 Act; and

19 “(II) shall be eligible for designation thereafter
20 at the discretion of the President, considering,
21 among other factors, whether a country under con-
22 sideration has been designated by the Secretary of
23 State as a ‘Country of Particular Concern’ for en-
24 gaging in or tolerating systematic, ongoing, and
25 egregious violations of religious freedom.

1 “(v) A designation under clause (i) shall not influence
2 decisions to grant, to any alien, asylum under section 208,
3 protection under section 241(b)(3), or protection under
4 the Convention Against Torture and Other Cruel, Inhu-
5 man or Degrading Treatment or Punishment, done at
6 New York December 10, 1984.

7 “(vi) A decision to deny admission under this section
8 to an alien who establishes to the satisfaction of the Sec-
9 retary that the alien is a member of a group designated
10 under clause (i) shall—

11 “(I) be in writing; and

12 “(II) state, to the maximum extent feasible, the
13 reason for the denial.

14 “(vii) Refugees admitted pursuant to a designation
15 under clause (i) shall be subject to the number of admis-
16 sions and be admissible under this section.”.

17 **SEC. 3404. ASYLUM DETERMINATION EFFICIENCY.**

18 Section 235(b)(1)(B)(ii) (8 U.S.C. 1225(b)(1)(B)(ii))
19 is amended by striking “asylum.” and inserting “asylum
20 by an asylum officer. The asylum officer, after conducting
21 a nonadversarial asylum interview and seeking supervisory
22 review, may grant asylum to the alien under section 208
23 or refer the case to a designee of the Attorney General,
24 for a de novo asylum determination, for relief under the
25 Convention Against Torture and Other Cruel, Inhuman or

1 Degrading Treatment or Punishment, done at New York
2 December 10, 1984, or for protection under section
3 241(b)(3).”.

4 **SEC. 3405. STATELESS PERSONS IN THE UNITED STATES.**

5 (a) IN GENERAL.—Chapter 1 of title II (8 U.S.C.
6 1151 et seq.) is amended by adding at the end the fol-
7 lowing:

8 **“SEC. 210A. PROTECTION OF CERTAIN STATELESS PER-**
9 **SONS IN THE UNITED STATES.**

10 **“(a) STATELESS PERSONS.—**

11 **“(1) IN GENERAL.—**In this section, the term
12 ‘stateless person’ means an individual who is not
13 considered a national under the operation of the
14 laws of any country.

15 **“(2) DESIGNATION OF SPECIFIC STATELESS**
16 **GROUPS.—**The Secretary of Homeland Security, in
17 consultation with the Secretary of State, may, in the
18 discretion of the Secretary, designate specific groups
19 of individuals who are considered stateless persons,
20 for purposes of this section.

21 **“(b) STATUS OF STATELESS PERSONS.—**

22 **“(1) RELIEF FOR CERTAIN INDIVIDUALS DE-**
23 **TERMINED TO BE STATELESS PERSONS.—**The Sec-
24 retary of Homeland Security or the Attorney Gen-
25 eral may, in his or her discretion, provide conditional

1 lawful status to an alien who is otherwise inadmis-
2 sible or deportable from the United States if the
3 alien—

4 “(A) is a stateless person present in the
5 United States;

6 “(B) applies for such relief;

7 “(C) has not lost his or her nationality as
8 a result of his or her voluntary action or know-
9 ing inaction after arrival in the United States;

10 “(D) except as provided in paragraphs (2)
11 and (3), is not inadmissible under section
12 212(a); and

13 “(E) is not described in section
14 241(b)(3)(B)(i).

15 “(2) INAPPLICABILITY OF CERTAIN PROVI-
16 SIONS.—The provisions under paragraphs (4), (5),
17 (7), and (9)(B) of section 212(a) shall not apply to
18 any alien seeking relief under paragraph (1).

19 “(3) WAIVER.—The Secretary or the Attorney
20 General may waive any other provisions of such sec-
21 tion, other than subparagraphs (B), (C), (D)(ii),
22 (E), (G), (H), or (I) of paragraph (2), paragraph
23 (3), paragraph (6)(C)(i) (with respect to misrepresen-
24 tations relating to the application for relief under
25 paragraph (1)), or subparagraphs (A), (C), (D), or

1 (E) of paragraph (10) of section 212(a), with re-
2 spect to such an alien for humanitarian purposes, to
3 assure family unity, or if it is otherwise in the public
4 interest.

5 “(4) SUBMISSION OF PASSPORT OR TRAVEL
6 DOCUMENT.—Any alien who seeks relief under this
7 section shall submit to the Secretary of Homeland
8 Security or the Attorney General—

9 “(A) any available passport or travel docu-
10 ment issued at any time to the alien (whether
11 or not the passport or document has expired or
12 been cancelled, rescinded, or revoked); or

13 “(B) an affidavit, sworn under penalty of
14 perjury—

15 “(i) stating that the alien has never
16 been issued a passport or travel document;
17 or

18 “(ii) identifying with particularity any
19 such passport or travel document and ex-
20 plaining why the alien cannot submit it.

21 “(5) WORK AUTHORIZATION.—The Secretary of
22 Homeland Security may authorize an alien who has
23 applied for and is found prima facie eligible for or
24 been granted relief under paragraph (1) to engage
25 in employment in the United States.

1 “(6) TRAVEL DOCUMENTS.—The Secretary may
2 issue appropriate travel documents to an alien who
3 has been granted relief under paragraph (1) that
4 would allow him or her to travel abroad and be ad-
5 mitted to the United States upon return, if other-
6 wise admissible.

7 “(7) TREATMENT OF SPOUSE AND CHIL-
8 DREN.—The spouse or child of an alien who has
9 been granted conditional lawful status under para-
10 graph (1) shall, if not otherwise eligible for admis-
11 sion under paragraph (1), be granted conditional
12 lawful status under this section if accompanying, or
13 following to join, such alien if—

14 “(A) the spouse or child is admissible (ex-
15 cept as otherwise provided in paragraphs (2)
16 and (3)) and is not described in section
17 241(b)(3)(B)(i); and

18 “(B) the qualifying relationship to the
19 principal beneficiary existed on the date on
20 which such alien was granted conditional lawful
21 status.

22 “(c) ADJUSTMENT OF STATUS.—

23 “(1) INSPECTION AND EXAMINATION.—At the
24 end of the 1-year period beginning on the date on
25 which an alien has been granted conditional lawful

1 status under subsection (b), the alien may apply for
2 lawful permanent residence in the United States if—

3 “(A) the alien has been physically present
4 in the United States for at least 1 year;

5 “(B) the alien’s conditional lawful status
6 has not been terminated by the Secretary of
7 Homeland Security or the Attorney General,
8 pursuant to such regulations as the Secretary
9 or the Attorney General may prescribe; and

10 “(C) the alien has not otherwise acquired
11 permanent resident status.

12 “(2) REQUIREMENTS FOR ADJUSTMENT OF
13 STATUS.—The Secretary of Homeland Security or
14 the Attorney General, under such regulations as the
15 Secretary or the Attorney General may prescribe,
16 may adjust the status of an alien granted condi-
17 tional lawful status under subsection (b) to that of
18 an alien lawfully admitted for permanent residence
19 if such alien—

20 “(A) is a stateless person;

21 “(B) properly applies for such adjustment
22 of status;

23 “(C) has been physically present in the
24 United States for at least 1 year after being

1 granted conditional lawful status under sub-
2 section (b);

3 “(D) is not firmly resettled in any foreign
4 country; and

5 “(E) is admissible (except as otherwise
6 provided under paragraph (2) or (3) of sub-
7 section (b)) as an immigrant under this chapter
8 at the time of examination of such alien for ad-
9 justment of status.

10 “(3) RECORD.—Upon approval of an applica-
11 tion under this subsection, the Secretary of Home-
12 land Security shall establish a record of the alien’s
13 admission for lawful permanent residence as of the
14 date that is 1 year before the date of such approval.

15 “(4) NUMERICAL LIMITATION.—The number of
16 aliens who may receive an adjustment of status
17 under this section for a fiscal year shall be subject
18 to the numerical limitation of section 203(b)(4).

19 “(d) PROVING THE CLAIM.—In determining an
20 alien’s eligibility for lawful conditional status or adjust-
21 ment of status under this subsection, the Secretary of
22 Homeland Security or the Attorney General shall consider
23 any credible evidence relevant to the application. The de-
24 termination of what evidence is credible and the weight

1 to be given that evidence shall be within the sole discretion
2 of the Secretary or the Attorney General.

3 “(e) REVIEW.—

4 “(1) ADMINISTRATIVE REVIEW.—No appeal
5 shall lie from the denial of an application by the
6 Secretary, but such denial will be without prejudice
7 to the alien’s right to renew the application in pro-
8 ceedings under section 240.

9 “(2) MOTIONS TO REOPEN.—Notwithstanding
10 any limitation imposed by law on motions to reopen
11 removal, deportation, or exclusion proceedings, any
12 individual who is eligible for relief under this section
13 may file a motion to reopen proceedings in order to
14 apply for relief under this section. Any such motion
15 shall be filed within 2 years of the date of the enact-
16 ment of the Border Security, Economic Opportunity,
17 and Immigration Modernization Act.

18 “(f) LIMITATION.—

19 “(1) APPLICABILITY.—The provisions of this
20 section shall only apply to aliens present in the
21 United States.

22 “(2) SAVINGS PROVISION.—Nothing in this sec-
23 tion may be construed to authorize or require—

24 “(A) the admission of any alien to the
25 United States;

1 “(B) the parole of any alien into the
2 United States; or

3 “(C) the grant of any motion to reopen or
4 reconsider filed by an alien after departure or
5 removal from the United States.”.

6 (b) JUDICIAL REVIEW.—Section 242(a)(2)(B)(ii) (8
7 U.S.C. 1252(a)(2)(B)(ii)) is amended by striking
8 “208(a).” and inserting “208(a) or 210A.”.

9 (c) CONFORMING AMENDMENT.—Section 203(b)(4)
10 (8 U.S.C. 1153(b)(4)) is amended by inserting “to aliens
11 granted an adjustment of status under section 210A(c)
12 or” after “level,”.

13 (d) CLERICAL AMENDMENT.—The table of contents
14 for the Immigration and Nationality Act is amended by
15 inserting after the item relating to section 210 the fol-
16 lowing:

“Sec. 210A. Protection of stateless persons in the United States.”.

17 **SEC. 3406. U VISA ACCESSIBILITY.**

18 Section 214(p)(2)(A) (8 U.S.C. 1184(p)(2)(A)) is
19 amended by striking “10,000.” and inserting “18,000, of
20 which not more than 3,000 visas may be issued for aliens
21 who are victims of a covered violation described in section
22 101(a)(15)(U).”.

1 **SEC. 3407. REPRESENTATION AT OVERSEAS REFUGEE**
2 **INTERVIEWS.**

3 Section 207(c) (8 U.S.C. 1157(c)) is amended by
4 adding at the end the following:

5 “(5) The adjudicator of an application for ref-
6 ugee status under this section shall consider all rel-
7 evant evidence and maintain a record of the evidence
8 considered.

9 “(6) An applicant for refugee status may be
10 represented, including at a refugee interview, at no
11 expense to the Government, by an attorney or ac-
12 credited representative who—

13 “(A) was chosen by the applicant; and

14 “(B) is authorized by the Secretary of
15 Homeland Security to be recognized as the rep-
16 resentative of such applicant in an adjudication
17 under this section.

18 “(7)(A) A decision to deny an application for
19 refugee status under this section—

20 “(i) shall be in writing; and

21 “(ii) shall provide, to the maximum extent
22 feasible, information on the reason for the de-
23 nial, including—

24 “(I) the facts underlying the deter-
25 mination; and

1 “(II) whether there is a waiver of in-
2 admissibility available to the applicant.

3 “(B) The basis of any negative credibility find-
4 ing shall be part of the written decision.

5 “(8)(A) An applicant who is denied refugee sta-
6 tus under this section may file a request with the
7 Secretary for a review of his or her application not
8 later than 120 days after such denial.

9 “(B) A request filed under subparagraph (A)
10 shall be adjudicated by refugee officers who have re-
11 ceived training on considering requests for review of
12 refugee applications that have been denied.

13 “(C) The Secretary shall publish the standard
14 applied to a request for review.

15 “(D) A request for review may result in the de-
16 cision being granted, denied, or reopened for a fur-
17 ther interview.

18 “(E) A decision on a request for review under
19 this paragraph—

20 “(i) shall be in writing; and

21 “(ii) shall provide, to the maximum extent
22 feasible, information on the reason for the de-
23 nial.”.

1 **Subtitle E—Shortage of Immigra-**
2 **tion Court Resources for Re-**
3 **moval Proceedings**

4 **SEC. 3501. SHORTAGE OF IMMIGRATION COURT PER-**
5 **SONNEL FOR REMOVAL PROCEEDINGS.**

6 (a) IMMIGRATION COURT JUDGES.—The Attorney
7 General shall increase the total number of immigration
8 judges to adjudicate current pending cases and efficiently
9 process future cases by at least—

10 (1) 75 in fiscal year 2014;

11 (2) 75 in fiscal year 2015; and

12 (3) 75 in fiscal year 2016.

13 (b) NECESSARY SUPPORT STAFF FOR IMMIGRATION
14 COURT JUDGES.—The Attorney General shall address the
15 shortage of support staff for immigration judges by ensur-
16 ing that each immigration judge has the assistance of the
17 necessary support staff, including the equivalent of 1 staff
18 attorney or law clerk and 1 legal assistant.

19 (c) ANNUAL INCREASES IN BOARD OF IMMIGRATION
20 APPEALS PERSONNEL.—The Attorney General shall in-
21 crease the number of Board of Immigration Appeals staff
22 attorneys (including the necessary additional support
23 staff) to efficiently process cases by at least—

24 (1) 30 in fiscal year 2014;

25 (2) 30 in fiscal year 2015; and

1 (3) 30 in fiscal year 2016.

2 (d) FUNDING.—There shall be appropriated, from
3 the Comprehensive Immigration Reform Trust Fund es-
4 tablished under section 6(a)(1), such sums as may be nec-
5 essary to carry out this section.

6 **SEC. 3502. IMPROVING IMMIGRATION COURT EFFICIENCY**
7 **AND REDUCING COSTS BY INCREASING AC-**
8 **CESS TO LEGAL INFORMATION.**

9 (a) CLARIFICATION REGARDING THE AUTHORITY OF
10 THE ATTORNEY GENERAL TO APPOINT COUNSEL TO
11 ALIENS IN IMMIGRATION PROCEEDINGS.—Section 292 (8
12 U.S.C. 1362) is amended—

13 (1) by inserting “(a)” before “In any”;

14 (2) by striking “(at no expense to the Govern-
15 ment)”;

16 (3) by striking “he shall” and inserting “the
17 person shall”; and

18 (4) by adding at the end the following:

19 “(b) The Government is not required to provide coun-
20 sel to aliens under subsection (a). However, the Attorney
21 General may, in the Attorney General’s sole and
22 unreviewable discretion, appoint or provide counsel to
23 aliens in immigration proceedings conducted under section
24 240 of this Act.”.

1 (b) APPOINTMENT OF COUNSEL IN CERTAIN
2 CASES.—Section 240(b)(4) (8 U.S.C. 1229a(b)(4)) is
3 amended—

4 (1) in subparagraph (A), by striking “, at no
5 expense to the Government,”; and

6 (2) by adding at the end the following: “The
7 Government is not required to provide counsel to
8 aliens under this paragraph. However, the Attorney
9 General may, in the Attorney General’s sole and
10 unreviewable discretion, appoint or provide counsel
11 at government expense to aliens in immigration pro-
12 ceedings.”.

13 (c) APPOINTMENT OF COUNSEL FOR UNACCOM-
14 PANIED ALIEN CHILDREN AND ALIENS WITH A SERIOUS
15 MENTAL DISABILITY.—Section 292 (8 U.S.C. 1362), as
16 amended by subsection (a), is further amended by adding
17 at the end the following:

18 “(c) Notwithstanding subsection (b), the Attorney
19 General shall appoint counsel, at the expense of the Gov-
20 ernment if necessary, to represent an alien in a removal
21 proceeding who has been determined by the Secretary to
22 be an unaccompanied alien child, is incompetent to rep-
23 resent himself or herself due to a serious mental disability
24 that would be included in section 3(2) of the Americans
25 with Disabilities Act of 1990 (42 U.S.C. 12102(2)), or is

1 considered particularly vulnerable when compared to other
2 aliens in removal proceedings, such that the appointment
3 of counsel is necessary to help ensure fair resolution and
4 efficient adjudication of the proceedings.”.

5 (d) FUNDING.—There shall be appropriated, from
6 the Comprehensive Immigration Reform Trust Fund es-
7 tablished under section 6(a)(1), such sums as may be nec-
8 essary to carry out this section and the amendments made
9 by this section.

10 **SEC. 3503. OFFICE OF LEGAL ACCESS PROGRAMS.**

11 (a) ESTABLISHMENT OF OFFICE OF LEGAL ACCESS
12 PROGRAMS.—The Attorney General shall maintain, within
13 the Executive Office for Immigration Review, an Office
14 of Legal Access Programs to develop and administer a sys-
15 tem of legal orientation programs to make immigration
16 proceedings more efficient and cost effective by educating
17 aliens regarding administrative procedures and legal
18 rights under United States immigration law and to estab-
19 lish other programs to assist in providing aliens access to
20 legal information.

21 (b) LEGAL ORIENTATION PROGRAMS.—The legal ori-
22 entation programs—

23 (1) shall provide programs to assist detained
24 aliens in making informed and timely decisions re-
25 garding their removal and eligibility for relief from

1 removal in order to increase efficiency and reduce
2 costs in immigration proceedings and Federal cus-
3 tody processes and to improve access to counsel and
4 other legal services;

5 (2) may provide services to detained aliens in
6 immigration proceedings under sections 235, 238,
7 240, and 241(a)(5) of the Immigration and Nation-
8 ality Act (8 U.S.C. 1225, 1228, 1229a, and
9 1231(a)(5)) and to other aliens in immigration and
10 asylum proceedings under sections 235, 238, and
11 240 of the Immigration and Nationality Act (8
12 U.S.C. 1225, 1228, and 1229a); and

13 (3) shall identify unaccompanied alien children,
14 aliens with a serious mental disability, and other
15 particularly vulnerable aliens for consideration by
16 the Attorney General pursuant to section 292(c) of
17 the Immigration and Nationality Act, as added by
18 section 3502(c).

19 (c) PROCEDURES.—The Secretary, in consultation
20 with the Attorney General, shall establish procedures that
21 ensure that legal orientation programs are available for
22 all detained aliens within 5 days of arrival into custody
23 and to inform such aliens of the basic procedures of immi-
24 gration hearings, their rights relating to those hearings
25 under the immigration laws, information that may deter

1 such aliens from filing frivolous legal claims, and any
2 other information deemed appropriate by the Attorney
3 General, such as a contact list of potential legal resources
4 and providers.

5 (d) RULE OF CONSTRUCTION.—Nothing in this sub-
6 section shall be construed to create any substantive or pro-
7 cedural right or benefit that is legally enforceable by any
8 party against the United States or its agencies or officers
9 or any other person.

10 (e) FUNDING.—There shall be appropriated, from the
11 Comprehensive Immigration Reform Trust Fund estab-
12 lished under section 6(a)(1), such sums as may be nec-
13 essary to carry out this section.

14 **SEC. 3504. CODIFYING BOARD OF IMMIGRATION APPEALS.**

15 (a) DEFINITION OF BOARD MEMBER.—Section
16 101(a) (8 U.S.C. 1101(a)) is amended by adding at the
17 end the following:

18 “(53) The term ‘Board Member’ means an at-
19 torney whom the Attorney General appoints to serve
20 on the Board of Immigration Appeals within the Ex-
21 ecutive Office of Immigration Review, and is quali-
22 fied to review decisions of immigration judges and
23 other matters within the jurisdiction of the Board of
24 Immigration Appeals.”.

1 (b) BOARD OF IMMIGRATION APPEALS.—Section
2 240(a)(1) (8 U.S.C. 1229a(a)(1)) is amended by adding
3 at the end the following: “The Board of Immigration Ap-
4 peals and its Board Members shall review decisions of im-
5 migration judges under this section.”.

6 (c) APPEALS.—Section 240(b)(4) (8 U.S.C.
7 1229a(b)(4)), as amended by section 3502(b), is further
8 amended—

9 (1) in subparagraph (B), by striking “, and”
10 and inserting a semicolon;

11 (2) in subparagraph (C), by striking the period
12 and inserting “; and”; and

13 (3) by inserting after subparagraph (C) the fol-
14 lowing:

15 “(D) the alien or the Department of
16 Homeland Security may appeal the immigration
17 judge’s decision to a 3-judge panel of the Board
18 of Immigration Appeals.”.

19 (d) DECISION AND BURDEN OF PROOF.—Section
20 240(c)(1)(A) (8 U.S.C. 1229a(c)(1)(A)) is amended to
21 read as follows:

22 “(A) IN GENERAL.—At the conclusion of
23 the proceeding, the immigration judge shall de-
24 cide whether an alien is removable from the
25 United States. The determination of the immi-

1 gration judge shall be based only on the evi-
2 dence produced at the hearing. On appeal, the
3 Board of Immigration Appeals shall issue a
4 written opinion. The opinion shall address all
5 dispositive arguments raised by the parties. The
6 panel may incorporate by reference the opinion
7 of the immigration judge whose decision is
8 being reviewed, provided that the panel also ad-
9 dresses any arguments made by the nonpre-
10 vailing party regarding purported errors of law,
11 fact, or discretion.”.

12 **SEC. 3505. IMPROVED TRAINING FOR IMMIGRATION**
13 **JUDGES AND BOARD MEMBERS.**

14 (a) IN GENERAL.—Section 240 (8 U.S.C. 1229a) is
15 amended by adding at the end the following:

16 “(f) IMPROVED TRAINING.—

17 “(1) IMPROVED TRAINING FOR IMMIGRATION
18 JUDGES AND BOARD MEMBERS.—

19 “(A) IN GENERAL.—In consultation with
20 the Attorney General and the Director of the
21 Federal Judicial Center, the Director of the Ex-
22 ecutive Office for Immigration Review shall re-
23 view and modify, as appropriate, training pro-
24 grams for immigration judges and Board Mem-
25 bers.

1 “(B) ELEMENTS OF REVIEW.—Each such
2 review shall study—

3 “(i) the expansion of the training pro-
4 gram for new immigration judges and
5 Board Members;

6 “(ii) continuing education regarding
7 current developments in the field of immi-
8 gration law; and

9 “(iii) methods to ensure that immigra-
10 tion judges are trained on properly crafting
11 and dictating decisions.

12 “(2) IMPROVED TRAINING AND GUIDANCE FOR
13 STAFF.—The Director of the Executive Office for
14 Immigration Review shall—

15 “(A) modify guidance and training regard-
16 ing screening standards and standards of re-
17 view; and

18 “(B) ensure that Board Members provide
19 staff attorneys with appropriate guidance in
20 drafting decisions in individual cases, consistent
21 with the policies and directives of the Director
22 of the Executive Office for Immigration Review
23 and the Chairman of the Board of Immigration
24 Appeals.”.

1 (b) FUNDING.—There shall be appropriated, from the
2 Comprehensive Immigration Reform Trust Fund estab-
3 lished under section 6(a)(1), such sums as may be nec-
4 essary to carry out this section and the amendment made
5 by this section.

6 **SEC. 3506. IMPROVED RESOURCES AND TECHNOLOGY FOR**
7 **IMMIGRATION COURTS AND BOARD OF IMMI-**
8 **GRATION APPEALS.**

9 (a) IMPROVED ON-BENCH REFERENCE MATERIALS
10 AND DECISION TEMPLATES.—The Director of the Execu-
11 tive Office for Immigration Review shall ensure that immi-
12 gration judges are provided with updated reference mate-
13 rials and standard decision templates that conform to the
14 law of the circuits in which they sit.

15 (b) PRACTICE MANUAL.—The Director of the Execu-
16 tive Office for Immigration Review shall produce a prac-
17 tice manual describing best practices for the immigration
18 courts and shall make such manual available electronically
19 to counsel and litigants who appear before the immigra-
20 tion courts.

21 (c) RECORDING SYSTEM AND OTHER TECH-
22 NOLOGIES.—

23 (1) PLAN REQUIRED.—The Director of the Ex-
24 ecutive Office for Immigration Review shall provide
25 the Attorney General with a plan and a schedule to

1 replace the immigration courts' tape recording sys-
2 tem with a digital recording system that is compat-
3 ible with the information management systems of
4 the Executive Office for Immigration Review.

5 (2) AUDIO RECORDING SYSTEM.—Consistent
6 with the plan described in paragraph (1), the Direc-
7 tor shall pilot a digital audio recording system not
8 later than 1 year after the enactment of this Act,
9 and shall begin nationwide implementation of that
10 system as soon as practicable.

11 (d) IMPROVED TRANSCRIPTION SERVICES.—Not
12 later than 1 year after the enactment of this Act, the Di-
13 rector of the Executive Office for Immigration Review
14 shall report to the Attorney General on the current tran-
15 scription services utilized by the Office and recommend
16 improvements to this system regarding quality and timeli-
17 ness of transcription.

18 (e) IMPROVED INTERPRETER SELECTION.—Not later
19 than 1 year after the enactment of this Act, the Director
20 of the Executive Office for Immigration Review shall re-
21 port to the Attorney General on the current interpreter
22 selection process utilized by the Office and recommend im-
23 provements to this process regarding screening, hiring,
24 certification, and evaluation of staff and contract inter-
25 preters.

1 (f) FUNDING.—There shall be appropriated, from the
2 Comprehensive Immigration Reform Trust Fund estab-
3 lished under section 6(a)(1), such sums as may be nec-
4 essary to carry out this section.

5 **Subtitle F—Prevention of Traf-**
6 **ficking in Persons and Abuses**
7 **Involving Workers Recruited**
8 **Abroad**

9 **SEC. 3601. DEFINITIONS.**

10 (a) IN GENERAL.—Except as otherwise provided by
11 this subtitle, the terms used in this subtitle shall have the
12 same meanings, respectively, as are given those terms in
13 section 3 of the Fair Labor Standards Act of 1938 (29
14 U.S.C. 203).

15 (b) OTHER DEFINITIONS.—

16 (1) FOREIGN LABOR CONTRACTOR.—The term
17 “foreign labor contractor” means any person who
18 performs foreign labor contracting activity, including
19 any person who performs foreign labor contracting
20 activity wholly outside of the United States, except
21 that the term does not include any entity of the
22 United States Government.

23 (2) FOREIGN LABOR CONTRACTING ACTIVITY.—
24 The term “foreign labor contracting activity” means
25 recruiting, soliciting, or related activities with re-

1 spect to an individual who resides outside of the
2 United States in furtherance of employment in the
3 United States, including when such activity occurs
4 wholly outside of the United States.

5 (3) PERSON.—The term “person” means any
6 natural person or any corporation, company, firm,
7 partnership, joint stock company or association or
8 other organization or entity (whether organized
9 under law or not), including municipal corporations.

10 (4) WORKER.—the term “worker” means an in-
11 dividual or exchange visitor who is the subject of for-
12 eign labor contracting activity.

13 **SEC. 3602. DISCLOSURE.**

14 (a) REQUIREMENT FOR DISCLOSURE.—Any person
15 who engages in foreign labor contracting activity shall as-
16 certain and disclose in writing in English and in the pri-
17 mary language of the worker at the time of the worker’s
18 recruitment, the following information:

19 (1) The identity and address of the employer
20 and the identity and address of the person con-
21 ducting the recruiting on behalf of the employer, in-
22 cluding any subcontractor or agent involved in such
23 recruiting.

24 (2) Unless such disclosure is otherwise required
25 under this Act, all assurances and terms and condi-

1 tions of employment, from the prospective employer
2 for whom the worker is being recruited, including
3 the work hours, level of compensation to be paid, the
4 place and period of employment, a description of the
5 type and nature of employment activities, any
6 withholdings or deductions from compensation and
7 any penalties for terminating employment.

8 (3) Unless otherwise required under this Act, a
9 signed copy of the work contract between the worker
10 and the employer.

11 (4) The type of visa under which the foreign
12 worker is to be employed, the length of time for
13 which the visa will be valid.

14 (5) Unless otherwise required under this Act,
15 an itemized list of any costs or expenses to be
16 charged to the worker and any deductions to be
17 taken from wages, including any costs for housing or
18 accommodation, transportation to and from the
19 worksite, meals, health insurance, workers' com-
20 pensation, costs of benefits provided, medical exami-
21 nations, healthcare, tools, or safety equipment costs.

22 (6) The existence of any labor organizing effort,
23 strike, lockout, or other labor dispute at the place of
24 employment.

1 (7) Whether and the extent to which workers
2 will be compensated through workers' compensation,
3 private insurance, or otherwise for injuries or death,
4 including work related injuries and death, during the
5 period of employment and, if so, the name of the
6 State workers' compensation insurance carrier or the
7 name of the policyholder of the private insurance,
8 the name and the telephone number of each person
9 who must be notified of an injury or death, and the
10 time period within which such notice must be given.

11 (8) A statement, in a form specified by the Sec-
12 retary—

13 (A) stating that—

14 (i) no foreign labor contractor, agent,
15 or employee of a foreign labor contractor,
16 may lawfully assess any fee (including visa
17 fees, processing fees, transportation fees,
18 legal expenses, placement fees, and other
19 costs) to a worker for any foreign labor
20 contracting activity; and

21 (ii) the employer may bear such costs
22 or fees for the foreign labor contractor, but
23 that these fees cannot be passed along to
24 the worker; and

1 (B) describing the protections afforded the
2 worker by this section and by section 202 of the
3 William Wilberforce Trafficking Victims Protec-
4 tion Reauthorization Act of 2008 (8 U.S.C.
5 1375b) and any applicable visa program, in-
6 cluding—

7 (i) relevant information about the pro-
8 cedure for filing a complaint provided for
9 in section 3611; and

10 (ii) the telephone number for the na-
11 tional human trafficking resource center
12 hotline number.

13 (9) Any education or training to be provided or
14 required, including the nature, timing and cost of
15 such training and the person who will pay such
16 costs, whether the training is a condition of employ-
17 ment, continued employment, or future employment;
18 and whether the worker will be paid or remunerated
19 during the training period, including the rate of pay.

20 (b) RELATIONSHIP TO LABOR AND EMPLOYMENT
21 LAWS.—Nothing in the disclosure required by subsection
22 (a) shall constitute a legal conclusion as to the worker's
23 status or rights under the labor and employment laws.

24 (c) PROHIBITION ON FALSE AND MISLEADING IN-
25 FORMATION.—No foreign labor contractor or employer

1 who engages in any foreign labor contracting activity shall
2 knowingly provide materially false or misleading informa-
3 tion to any worker concerning any matter required to be
4 disclosed under subsection (a). The disclosure required by
5 this section is a document concerning the proper adminis-
6 tration of a matter within the jurisdiction of a department
7 or agency of the United States for the purposes of section
8 1519 of title 18, United States Code.

9 **SEC. 3603. PROHIBITION ON DISCRIMINATION.**

10 (a) IN GENERAL.—It shall be unlawful for an em-
11 ployer or a foreign labor contractor to fail or refuse to
12 hire, discharge, intimidate, threaten, restrain, coerce, or
13 blacklist any individual or otherwise discriminate against
14 an individual with respect to compensation, terms, condi-
15 tions, or privileges of employment, because of such individ-
16 ual's race, color, creed, sex, national origin, religion, age,
17 or disability.

18 (b) DETERMINATIONS OF DISCRIMINATION.—For the
19 purposes of determining the existence of unlawful dis-
20 crimination under subsection (a)—

21 (1) in the case of a claim of discrimination
22 based on race, color, creed, sex, national origin, or
23 religion, the same legal standards shall apply as are
24 applicable under title VII of the Civil Rights Act of
25 1964 (42 U.S.C. 2000e et seq.);

1 (2) in the case of a claim of discrimination
2 based on unlawful discrimination based on age, the
3 same legal standards shall apply as are applicable
4 under the Age Discrimination in Employment Act of
5 1967 (29 U.S.C. 621 et seq.); and

6 (3) in the case of a claim of discrimination
7 based on disability, the same legal standards shall
8 apply as are applicable under title I of the Ameri-
9 cans With Disabilities Act of 1990 (42 U.S.C.
10 12111 et seq.).

11 **SEC. 3604. RECRUITMENT FEES.**

12 No employer, foreign labor contractor, or agent or
13 employee of a foreign labor contractor, shall assess any
14 fee (including visa fees, processing fees, transportation
15 fees, legal expenses, placement fees, and other costs) to
16 a worker for any foreign labor contracting activity.

17 **SEC. 3605. REGISTRATION.**

18 (a) REQUIREMENT TO REGISTER.—

19 (1) IN GENERAL.—Subject to paragraph (2),
20 prior to engaging in any foreign labor contracting
21 activity, any person who is a foreign labor contractor
22 or who, for any money or other valuable consider-
23 ation paid or promised to be paid, performs a for-
24 eign labor contracting activity on behalf of a foreign
25 labor contractor, shall obtain a certificate of reg-

1 istration from the Secretary of Labor pursuant to
2 regulations promulgated by the Secretary under sub-
3 section (c).

4 (2) EXCEPTION FOR CERTAIN EMPLOYERS.—An
5 employer, or employee of an employer, who engages
6 in foreign labor contracting activity solely to find
7 employees for that employer's own use, and without
8 the participation of any other foreign labor con-
9 tractor, shall not be required to register under this
10 section.

11 (b) NOTIFICATION.—

12 (1) ANNUAL EMPLOYER NOTIFICATION.—Each
13 employer shall notify the Secretary, not less fre-
14 quently than once every year, of the identity of any
15 foreign labor contractor involved in any foreign labor
16 contracting activity for, or on behalf of, the em-
17 ployer, including at a minimum, the name and ad-
18 dress of the foreign labor contractor and a descrip-
19 tion of the services.

20 (2) ANNUAL FOREIGN LABOR CONTRACTOR NO-
21 TIFICATION.—Each foreign labor contractor shall
22 notify the Secretary, not less frequently than once
23 every year, of the identity of any subcontractee,
24 agent, or foreign labor contractor employee involved

1 in any foreign labor contracting activity for, or on
2 behalf of, the foreign labor contractor.

3 (3) NONCOMPLIANCE NOTIFICATION.—An em-
4 ployer shall notify the Secretary of the identity of a
5 foreign labor contractor whose activities do not com-
6 ply with this subtitle.

7 (4) AGREEMENT.—Not later than 7 days after
8 receiving a request from the Secretary, an employer
9 shall provide the Secretary with the identity of any
10 foreign labor contractor with which the employer has
11 a contract or other agreement.

12 (c) REGULATIONS.—Not later than 180 days after
13 the date of the enactment of this Act, the Secretary shall
14 promulgate regulations to establish an efficient electronic
15 process for the timely investigation and approval of an ap-
16 plication for a certificate of registration of foreign labor
17 contractors, including—

18 (1) a declaration, subscribed and sworn to by
19 the applicant, stating the applicant's permanent
20 place of residence, the foreign labor contracting ac-
21 tivities for which the certificate is requested, and
22 such other relevant information as the Secretary
23 may require;

24 (2) a set of fingerprints of the applicant;

1 (3) an expeditious means to update registra-
2 tions and renew certificates;

3 (4) providing for the consent of any foreign
4 labor recruiter to the designation by a court of the
5 Secretary as an agent available to accept service of
6 summons in any action against the applicant, if the
7 applicant has left the jurisdiction in which the action
8 is commenced, otherwise has become unavailable to
9 accept service or is subject to personal jurisdiction
10 in no State;

11 (5) providing for the consent of any foreign
12 labor recruiter to jurisdiction in the Department or
13 any Federal or State court in the United States for
14 any action brought by any aggrieved individual or
15 worker;

16 (6) providing for cooperation in any investiga-
17 tion by the Secretary or other appropriate authori-
18 ties;

19 (7) providing for consent to the forfeiture of the
20 bond for failure to cooperate with these provisions;

21 (8) providing for consent to be liable for viola-
22 tions of this subtitle by any agents or subcontractees
23 of any level in relation to the foreign labor con-
24 tracting activity of the agent or subcontractee to the

1 same extent as if the foreign labor contractor had
2 committed the violation; and

3 (9) providing for consultation with other appro-
4 priate Federal agencies to determine whether any
5 reason exists to deny registration to a foreign labor
6 contractor.

7 (d) TERM OF REGISTRATION.—Unless suspended or
8 revoked, a certificate under this section shall be valid for
9 2 years.

10 (e) APPLICATION FEE.—

11 (1) REQUIREMENT FOR FEE.—In addition to
12 any other fees authorized by law, the Secretary shall
13 impose a fee, to be deposited in the general fund of
14 the Treasury, on a foreign labor contractor that sub-
15 mits an application for a certificate of registration
16 under this section.

17 (2) AMOUNT OF FEE.—The amount of the fee
18 required by paragraph (1) shall be set at a level that
19 the Secretary determines sufficient to cover the full
20 costs of carrying out foreign labor contract registra-
21 tion activities under this subtitle, including worker
22 education and any additional costs associated with
23 the administration of the fees collected.

24 (f) REFUSAL TO ISSUE; REVOCATION.—In accord-
25 ance with regulations promulgated by the Secretary, the

1 Secretary shall refuse to issue or renew, or shall revoke
2 and debar from eligibility to obtain a certificate of reg-
3 istration for a period of not greater than 5 years, after
4 notice and an opportunity for a hearing, a certificate of
5 registration under this section if—

6 (1) the applicant for, or holder of, the certifi-
7 cation has knowingly made a material misrepresen-
8 tation in the application for such certificate;

9 (2) the applicant for, or holder of, the certifi-
10 cation is not the real party in interest in the applica-
11 tion or certificate of registration and the real party
12 in interest—

13 (A) is a person who has been refused
14 issuance or renewal of a certificate;

15 (B) has had a certificate revoked; or

16 (C) does not qualify for a certificate under
17 this section;

18 (3) the applicant for, or holder of, the certifi-
19 cation has been convicted within the preceding 5
20 years of—

21 (A) any felony under State or Federal law
22 or crime involving robbery, bribery, extortion,
23 embezzlement, grand larceny, burglary, arson,
24 violation of narcotics laws, murder, rape, as-
25 sault with intent to kill, assault which inflicts

1 grievous bodily injury, prostitution, peonage, or
2 smuggling or harboring individuals who have
3 entered the United States illegally; or

4 (B) any crime relating to gambling, or to
5 the sale, distribution or possession of alcoholic
6 beverages, in connection with or incident to any
7 labor contracting activities.

8 (4) the applicant for, or holder of, the certifi-
9 cation has materially failed to comply with this sec-
10 tion.

11 (g) RE-REGISTRATION OF VIOLATORS.—The Sec-
12 retary shall establish a procedure by which a foreign labor
13 contractor that has had its registration revoked under sub-
14 section (f) may seek to re-register under this subsection
15 by demonstrating to the Secretary's satisfaction that the
16 foreign labor contractor has not violated this subtitle in
17 the previous 5 years and that the foreign labor contractor
18 has taken sufficient steps to prevent future violations of
19 this subtitle.

20 **SEC. 3606. BONDING REQUIREMENT.**

21 (a) IN GENERAL.—The Secretary shall require a for-
22 eign labor contractor to post a bond in an amount suffi-
23 cient to ensure the ability of the foreign labor contractor
24 to discharge its responsibilities and to ensure protection
25 of workers, including wages.

1 (b) REGULATIONS.—The Secretary, by regulation,
2 shall establish the conditions under which the bond
3 amount is determined, paid, and forfeited.

4 (c) RELATIONSHIP TO OTHER REMEDIES.—The bond
5 requirements and forfeiture of the bond under this section
6 shall be in addition to other remedies under 3610 or any
7 other law.

8 **SEC. 3607. MAINTENANCE OF LISTS.**

9 (a) IN GENERAL.—The Secretary shall maintain—
10 (1) a list of all foreign labor contractors reg-
11 istered under this subsection, including—

12 (A) the countries from which the contrac-
13 tors recruit;

14 (B) the employers for whom the contrac-
15 tors recruit;

16 (C) the visa categories and occupations for
17 which the contractors recruit; and

18 (D) the States where recruited workers are
19 employed; and

20 (2) a list of all foreign labor contractors whose
21 certificate of registration the Secretary has revoked.

22 (b) UPDATES; AVAILABILITY.—The Secretary shall—

23 (1) update the lists required by subsection (a)
24 on an ongoing basis, not less frequently than every
25 6 months; and

1 (2) make such lists publicly available, including
2 through continuous publication on Internet websites
3 and in written form at and on the websites of
4 United States embassies in the official language of
5 that country.

6 (c) INTER-AGENCY AVAILABILITY.—The Secretary
7 shall share the information described in subsection (a)
8 with the Secretary of State.

9 **SEC. 3608. AMENDMENT TO THE IMMIGRATION AND NA-**
10 **TIONALITY ACT.**

11 Section 214 (8 U.S.C. 1184) is amended by adding
12 at the end the following:

13 “(s) A visa shall not be issued under the subpara-
14 graph (A)(iii), (B)(i) (but only for domestic servants de-
15 scribed in clause (i) or (ii) of section 274a.12(c)(17) of
16 title 8, Code of Federal Regulations (as in effect on De-
17 cember 4, 2007)), (G)(v), (H), (J), (L), (Q), (R), or (W)
18 of section 101(a)(15) until the consular officer—

19 “(1) has provided to and reviewed with the ap-
20 plicant, in the applicant’s language (or a language
21 the applicant understands), a copy of the informa-
22 tion and resources pamphlet required by section 202
23 of the William Wilberforce Trafficking Victims Pro-
24 tection Reauthorization Act of 2008 (8 U.S.C.
25 1375b); and

1 “(2) has reviewed and made a part of the visa
2 file the foreign labor recruiter disclosures required
3 by section 3602 of the Border Security, Economic
4 Opportunity, and Immigration Modernization Act,
5 including whether the foreign labor recruiter is reg-
6 istered pursuant to that section.”.

7 **SEC. 3609. RESPONSIBILITIES OF SECRETARY OF STATE.**

8 (a) IN GENERAL.—The Secretary of State shall en-
9 sure that each United States diplomatic mission has a per-
10 son who shall be responsible for receiving information
11 from any worker who has been subject to violations of this
12 subtitle.

13 (b) PROVISION OF INFORMATION.—The responsible
14 person referred to in subsection (a) shall ensure that the
15 information received is provided to the Department of Jus-
16 tice, the Department of Labor, or any other relevant Fed-
17 eral agency.

18 (c) MECHANISMS.—The Attorney General and the
19 Secretary shall ensure that there is a mechanism for any
20 actions that need to be taken in response to information
21 received under subsection (a).

22 (d) ASSISTANCE FROM FOREIGN GOVERNMENT.—
23 The person designated for receiving information pursuant
24 to subsection (a) is strongly encouraged to coordinate with
25 governments and civil society organizations in the coun-

1 tries of origin to ensure the worker receives additional sup-
2 port.

3 (e) MAINTENANCE AND AVAILABILITY OF INFORMA-
4 TION.—The Secretary of State shall ensure that con-
5 sulates maintain information regarding the identities of
6 foreign labor contractors and the employers to whom the
7 foreign labor contractors supply workers. The Secretary
8 of State shall make such information publically available
9 in written form and on-line, including on the websites of
10 United States embassies in the official language of that
11 country.

12 (f) ANNUAL PUBLIC DISCLOSE.—The Secretary of
13 State shall make publically available on-line, on an annual
14 basis, data disclosing the gender, country of origin and
15 state, if available, date of birth, wage, level of training,
16 and occupation category, disaggregated by job and by visa
17 category.

18 **SEC. 3610. ENFORCEMENT PROVISIONS.**

19 (a) COMPLAINTS AND INVESTIGATIONS.—The Sec-
20 retary—

21 (1) shall establish a process for the receipt, in-
22 vestigation, and disposition of complaints filed by
23 any person, including complaints respecting a for-
24 eign labor contractor's compliance with this subtitle;
25 and

1 (2) either pursuant to the process required by
2 paragraph (1) or otherwise, may investigate employ-
3 ers or foreign labor contractors, including actions oc-
4 curring in a foreign country, as necessary to deter-
5 mine compliance with this subtitle.

6 (b) ADMINISTRATIVE ENFORCEMENT.—

7 (1) IN GENERAL.—If the Secretary finds, after
8 notice and an opportunity for a hearing, any foreign
9 labor contractor or employer failed to comply with
10 any of the requirements of this subtitle, the Sec-
11 retary may impose the following against such con-
12 tractor or employer—

13 (A) a fine in an amount not more than
14 \$10,000 per violation; and

15 (B) upon the occasion of a third violation
16 or a failure to comply with representations, a
17 fine of not more than \$25,000 per violation.

18 (c) AUTHORITY TO ENSURE COMPLIANCE.—The Sec-
19 retary is authorized to take other such actions, including
20 issuing subpoenas and seeking appropriate injunctive re-
21 lief and recovery of damages, as may be necessary to as-
22 sure compliance with the terms and conditions of this sub-
23 title.

24 (d) BONDING.—Pursuant to the bonding requirement
25 in section 3606, bond liquidation and forfeitures shall be

1 in addition to other remedies under this section or any
2 other law.

3 (e) CIVIL ACTION.—

4 (1) IN GENERAL.—The Secretary or any person
5 aggrieved by a violation of this subtitle may bring a
6 civil action against any foreign labor contractor that
7 does not meet the requirements under subsection
8 (f)(2) in any court of competent jurisdiction—

9 (A) to seek remedial action, including in-
10 junctive relief;

11 (B) to recover damages on behalf of any
12 worker harmed by a violation of this subsection;
13 and,

14 (C) to ensure compliance with require-
15 ments of this section.

16 (2) ACTIONS BY THE SECRETARY OF HOME-
17 LAND SECURITY.—

18 (A) SUMS RECOVERED.—Any sums recov-
19 ered by the Secretary on behalf of a worker
20 under paragraph (1) or through liquidation of
21 the bond held pursuant to section 3606 shall be
22 held in a special deposit account and shall be
23 paid, on order of the Secretary, directly to each
24 worker affected. Any such sums not paid to a
25 worker because of inability to do so within a pe-

1 riod of 5 years shall be credited as an offsetting
2 collection to the appropriations account of the
3 Secretary for expenses for the administration of
4 this section and shall remain available to the
5 Secretary until expended or may be used for en-
6 forcement of the laws within the jurisdiction of
7 the wage and hour division or may be trans-
8 ferred to the Secretary of Health and Human
9 Services for the purpose of providing support to
10 programs that provide assistance to victims of
11 trafficking in persons or other exploited per-
12 sons. The Secretary shall work with any attor-
13 ney or organization representing workers to lo-
14 cate workers owed sums under this section.

15 (B) REPRESENTATION.—Except as pro-
16 vided in section 518(a) of title 28, United
17 States Code, the Attorney General may appear
18 for and represent the Secretary in any civil liti-
19 gation brought under this paragraph. All such
20 litigation shall be subject to the direction and
21 control of the Attorney General.

22 (3) ACTIONS BY INDIVIDUALS.—

23 (A) AWARD.—If the court finds in a civil
24 action filed by an individual under this section
25 that the defendant has violated any provision of

1 this subtitle (or any regulation issued pursuant
2 to this subtitle), the court may award—

3 (i) damages, up to and including an
4 amount equal to the amount of actual
5 damages, and statutory damages of up to
6 \$1,000 per plaintiff per violation, or other
7 equitable relief, except that with respect to
8 statutory damages—

9 (I) multiple infractions of a sin-
10 gle provision of this subtitle (or of a
11 regulation under this subtitles) shall
12 constitute only 1 violation for pur-
13 poses of section 3602(a) to determine
14 the amount of statutory damages due
15 a plaintiff; and

16 (II) if such complaint is certified
17 as a class action the court may
18 award—

19 (aa) damages up to an
20 amount equal to the amount of
21 actual damages; and

22 (bb) statutory damages of
23 no more than the lesser of up to
24 \$1,000 per class member per vio-

1 lation, or up to \$500,000; and
2 other equitable relief;
3 (ii) reasonable attorneys' fees and
4 costs; and
5 (iii) such other and further relief, in-
6 cluding declaratory and injunctive relief, as
7 necessary to effectuate the purposes of this
8 subtitle.

9 (B) CRITERIA.—In determining the
10 amount of statutory damages to be awarded
11 under subparagraph (A), the court is author-
12 ized to consider whether an attempt was made
13 to resolve the issues in dispute before the resort
14 to litigation.

15 (C) BOND.—To satisfy the damages, fees,
16 and costs found owing under this clause, the
17 Secretary shall release as much of the bond
18 held pursuant to section 3606 as necessary.

19 (D) APPEAL.—Any civil action brought
20 under this section shall be subject to appeal as
21 provided in chapter 83 of title 28, United
22 States Code (28 U.S.C. 1291 et seq.).

23 (E) ACCESS TO LEGAL SERVICES COR-
24 PORATION.—Notwithstanding any other provi-
25 sion of law, the Legal Services Corporation and

1 recipients of its funding may provide legal as-
2 sistance on behalf of any alien with respect to
3 any provision of this subtitle.

4 (f) AGENCY LIABILITY.—

5 (1) IN GENERAL.—Beginning 180 days after
6 the Secretary has promulgated regulations pursuant
7 to section 3605(c), an employer who retains the
8 services of a foreign labor contractor shall only use
9 those foreign labor contractors who are registered
10 under section 3605.

11 (2) SAFE HARBOR.—An employer shall not have
12 any liability under this section if the employer—

13 (A) hires workers referred by a foreign
14 labor contractor that has a valid registration
15 with the Department pursuant to section 3604;

16 (B) does not act with reckless disregard of
17 the fact that the foreign labor contractor has
18 violated any provision under this section; and

19 (C) reported any violation of a provision
20 under this section after obtaining knowledge of
21 such violation.

22 (3) LIABILITY FOR AGENTS.—Foreign labor
23 contractors shall be subject to the provisions of this
24 section for violations committed by the foreign labor
25 contractor's agents or subcontractees of any level in

1 relation to their foreign labor contracting activity to
2 the same extent as if the foreign labor contractor
3 had committed the violation.

4 (g) RETALIATION.—

5 (1) IN GENERAL.—No person shall intimidate,
6 threaten, restrain, coerce, discharge or in any other
7 manner discriminate or retaliate against any worker
8 or their family members (including a former em-
9 ployee or an applicant for employment) because such
10 worker disclosed information to any person that the
11 worker reasonably believes evidences a violation of
12 this section (or any rule or regulation pertaining to
13 this section), including seeking legal assistance of
14 counsel or cooperating with an investigation or other
15 proceeding concerning compliance with this section
16 (or any rule or regulation pertaining to this section).

17 (2) ENFORCEMENT.—An individual who is sub-
18 ject to any conduct described in paragraph (1) may,
19 in a civil action, recover appropriate relief, including
20 reasonable attorneys' fees and costs, with respect to
21 that violation. Any civil action under this subpara-
22 graph shall be stayed during the pendency of any
23 criminal action arising out of the violation.

1 (h) WAIVER OF RIGHTS.—Agreements by employees
2 purporting to waive or to modify their rights under this
3 subtitle shall be void as contrary to public policy.

4 (i) PRESENCE DURING PENDENCY OF ACTIONS.—

5 (1) IN GENERAL.—If other immigration relief is
6 not available, the Attorney General and the Sec-
7 retary shall grant advance parole to permit a non-
8 immigrant to remain legally in the United States for
9 time sufficient to fully and effectively participate in
10 all legal proceedings related to any action taken pur-
11 suant to this section.

12 (2) REGULATIONS.—Not later than 180 days
13 after the date of the enactment of this Act, the Sec-
14 retary shall promulgate regulations to carry out
15 paragraph (1).

16 **SEC. 3611. RULE OF CONSTRUCTION.**

17 Nothing in this subtitle shall be construed to preempt
18 or alter any other rights or remedies, including any causes
19 of action, available under any other Federal or State law.

20 **SEC. 3612. REGULATIONS.**

21 The Secretary shall prescribe such regulations as may
22 be necessary to carry out this subtitle.

1 **Subtitle G—Interior Enforcement**

2 **SEC. 3701. CRIMINAL STREET GANGS.**

3 (a) INADMISSIBILITY.—Section 212(a)(2) (8 U.S.C.
4 1182(a)(2)) is amended by inserting after subparagraph
5 (I) the following:

6 “(J) ALIENS IN CRIMINAL STREET
7 GANGS.—

8 “(i) IN GENERAL.—Any alien is inad-
9 missible—

10 “(I) who has been convicted of
11 an offense for which an element was
12 active participation in a criminal
13 street gang (as defined in section
14 521(a) of title 18, United States
15 Code) and the alien—

16 “(aa) had knowledge that
17 the gang’s members engaged in
18 or have engaged in a continuing
19 series of offenses described in
20 section 521(c) of title 18, United
21 States Code; and

22 “(bb) acted with the inten-
23 tion to promote or further the fe-
24 lonious activities of the criminal
25 street gang or maintain or in-

1 crease his or her position in the
2 gang; or

3 “(II) subject to clause (ii), who is
4 18 years of age or older, who is phys-
5 ically present outside the United
6 States, whom the Secretary deter-
7 mines by clear and convincing evi-
8 dence, based upon law enforcement in-
9 formation deemed credible by the Sec-
10 retary, has, since the age of 18, know-
11 ingly and willingly participated in a
12 criminal street gang with knowledge
13 that such participation promoted or
14 furthered the illegal activity of the
15 gang.

16 “(ii) WAIVER.—The Secretary may
17 waive clause (i)(II) if the alien has re-
18 nounced all association with the criminal
19 street gang, is otherwise admissible, and is
20 not a threat to the security of the United
21 States.”.

22 (b) GROUNDS FOR DEPORTATION.—Section
23 237(a)(2) (8 U.S.C. 1227(a)(2)) is amended by adding at
24 the end the following:

1 “(G) ALIENS ASSOCIATED WITH CRIMINAL
2 STREET GANGS.—Any alien is removable who
3 has been convicted of an offense for which an
4 element was active participation in a criminal
5 street gang (as defined in section 521(a) of title
6 18, United States Code), and the alien—

7 “(i) had knowledge that the gang’s
8 members engaged in or have engaged in a
9 continuing series of offenses described in
10 section 521(c) of title 18, United States
11 Code; and

12 “(ii) acted with the intention to pro-
13 mote or further the felonious activities the
14 criminal street gang or increase his or her
15 position in such gang.”.

16 (c) GROUND OF INELIGIBILITY FOR REGISTERED
17 PROVISIONAL IMMIGRANT STATUS.—

18 (1) IN GENERAL.—An alien who is 18 years of
19 age or older is ineligible for registered provisional
20 immigrant status if the Secretary determines that
21 the alien—

22 (A) has been convicted of an offense for
23 which an element was active participation in a
24 criminal street gang (as defined in section

1 521(a) of title 18, United States Code and the
2 alien—

3 (i) had knowledge that the gang's
4 members engaged in or have engaged in a
5 continuing series of offenses described in
6 section 521(c) of title 18, United States
7 Code; and

8 (ii) acted with the intention to pro-
9 mote or further the felonious activities of
10 the criminal street gang or maintain or in-
11 crease his or her position in such gang; or

12 (B) subject to paragraph (2), any alien
13 who is 18 years of age or older whom the Sec-
14 retary determines by clear and convincing evi-
15 dence, based upon law enforcement information
16 deemed credible by the Secretary, has, since the
17 age of 18, knowingly and willingly participated
18 in a such gang with knowledge that such par-
19 ticipation promoted or furthered the illegal ac-
20 tivity of such gang.

21 (2) WAIVER.—The Secretary may waive the ap-
22 plication of paragraph (1)(B) if the alien has re-
23 nounced all association with the criminal street
24 gang, is otherwise admissible, and is not a threat to
25 the security of the United States.

1 **SEC. 3702. BANNING HABITUAL DRUNK DRIVERS FROM THE**
2 **UNITED STATES.**

3 (a) GROUND FOR INADMISSIBILITY.—Section
4 212(a)(2) (8 U.S.C. 1182(a)(2)), as amended by section
5 3701(a), is further amended—

6 (1) by redesignating subparagraph (F) as sub-
7 paragraph (L); and

8 (2) by inserting after subparagraph (E) the fol-
9 lowing:

10 “(F) HABITUAL DRUNK DRIVERS.—An
11 alien convicted of 3 or more offenses for driving
12 under the influence or driving while intoxicated
13 on separate dates is inadmissible.”.

14 (b) GROUND FOR DEPORTATION.—Section
15 237(a)(2) (8 U.S.C. 1227(a)(2)), as amended by section
16 3701(b), is further amended by adding at the end the fol-
17 lowing:

18 “(H) HABITUAL DRUNK DRIVERS.—An
19 alien convicted of 3 or more offenses for driving
20 under the influence or driving while intoxicated,
21 at least 1 of which occurred after the date of
22 the enactment of the Border Security, Eco-
23 nomic Opportunity, and Immigration Mod-
24 ernization Act, is deportable.”.

1 **SEC. 3703. SEXUAL ABUSE OF A MINOR.**

2 Section 101(a)(43)(A) (8 U.S.C. 1101(a)(43)(A)) is
3 amended by striking “murder, rape, or sexual abuse of
4 a minor;” and inserting “murder, rape, or sexual abuse
5 of a minor, whether or not the minority of the victim is
6 established by evidence contained in the record of convic-
7 tion or by credible evidence extrinsic to the record of con-
8 viction;”.

9 **SEC. 3704. ILLEGAL ENTRY.**

10 (a) IN GENERAL.—Section 275 (8 U.S.C. 1325) is
11 amended to read as follows:

12 **“SEC. 275. ILLEGAL ENTRY.**

13 “(a) IN GENERAL.—

14 “(1) CRIMINAL OFFENSES.—An alien shall be
15 subject to the penalties set forth in paragraph (2) if
16 the alien—

17 “(A) enters or crosses the border into the
18 United States at any time or place other than
19 as designated by the Secretary of Homeland Se-
20 curity;

21 “(B) eludes examination or inspection by
22 an immigration officer, or a customs or agri-
23 culture inspection at a port of entry; or

24 “(C) enters or crosses the border to the
25 United States by means of a knowingly false or

1 misleading representation or the concealment of
2 a material fact.

3 “(2) CRIMINAL PENALTIES.—Any alien who
4 violates any provision under paragraph (1)—

5 “(A) shall, for the first violation, be fined
6 under title 18, United States Code, imprisoned
7 not more than 12 months, or both;

8 “(B) shall, for a second or subsequent vio-
9 lation, or following an order of voluntary depar-
10 ture, be fined under such title, imprisoned not
11 more than 3 years, or both;

12 “(C) if the violation occurred after the
13 alien had been convicted of 3 or more mis-
14 demeanors with the convictions occurring on
15 different dates or of a felony for which the alien
16 served a term of imprisonment of 15 days or
17 more, shall be fined under such title, impris-
18 oned not more than 10 years, or both; and

19 “(D) if the violation occurred after the
20 alien had been convicted of a felony for which
21 the alien was sentenced to a term of imprison-
22 ment of not less than 30 months, shall be fined
23 under such title, imprisoned not more than 15
24 years, or both.

1 “(3) PRIOR CONVICTIONS.—The prior convic-
2 tions described in subparagraphs (C) and (D) of
3 paragraph (2) are elements of the offenses described
4 in that paragraph and the penalties in such subpara-
5 graphs shall apply only in cases in which the convic-
6 tion or convictions that form the basis for the addi-
7 tional penalty are—

8 “(A) alleged in the indictment or informa-
9 tion; and

10 “(B) proven beyond a reasonable doubt at
11 trial or admitted by the defendant under oath
12 as part of a plea agreement.

13 “(b) IMPROPER TIME OR PLACE; CIVIL PEN-
14 ALTIES.—Any alien older than 18 years of age who is ap-
15 prehended while knowingly entering, attempting to enter,
16 or crossing or attempting to cross the border to the United
17 States at a time or place other than as designated by im-
18 migration officers shall be subject to a civil penalty, in
19 addition to any criminal or other civil penalties that may
20 be imposed under any other provision of law, in an amount
21 equal to—

22 “(1) not less than \$250 or more than \$5,000
23 for each such entry, crossing, attempted entry, or at-
24 tempted crossing; or

1 “(2) twice the amount specified in paragraph
2 (1) if the alien had previously been subject to a civil
3 penalty under this subsection.

4 “(c) FRAUDULENT MARRIAGE.—An individual who
5 knowingly enters into a marriage for the purpose of evad-
6 ing any provision of the immigration laws shall be impris-
7 oned for not more than 5 years, fined not more than
8 \$250,000, or both.

9 “(d) COMMERCIAL ENTERPRISES.—Any individual
10 who knowingly establishes a commercial enterprise for the
11 purpose of evading any provision of the immigration laws
12 shall be imprisoned for not more than 5 years, fined in
13 accordance with title 18, United States Code, or both.”.

14 (b) CLERICAL AMENDMENT.—The table of contents
15 is amended by striking the item relating to section 275
16 and inserting the following:

 “Sec. 275. Illegal entry.”.

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall take effect 1 year after the date of the
19 enactment of this Act.

20 **SEC. 3705. REENTRY OF REMOVED ALIEN.**

21 Section 276 (8 U.S.C. 1326) is amended to read as
22 follows:

23 **“SEC. 276. REENTRY OF REMOVED ALIEN.**

24 “(a) REENTRY AFTER REMOVAL.—Any alien who
25 has been denied admission, excluded, deported, or re-

1 moved, or who has departed the United States while an
2 order of exclusion, deportation, or removal is outstanding,
3 and subsequently enters, attempts to enter, crosses the
4 border to, attempts to cross the border to, or is at any
5 time found in the United States, shall be fined under title
6 18, United States Code, and imprisoned not more than
7 2 years.

8 “(b) REENTRY OF CRIMINAL OFFENDERS.—Not-
9 withstanding the penalty provided in subsection (a), if an
10 alien described in that subsection—

11 “(1) was convicted for 3 or more misdemeanors,
12 with the convictions occurring on different dates, be-
13 fore such removal or departure, the alien shall be
14 fined under title 18, United States Code, and im-
15 prisoned not more than 10 years, or both;

16 “(2) was convicted for a felony before such re-
17 moval or departure for which the alien was sen-
18 tenced to a term of imprisonment of not less than
19 30 months, the alien shall be fined under such title,
20 and imprisoned not more than 15 years, or both;

21 “(3) was convicted for a felony before such re-
22 moval or departure for which the alien was sen-
23 tenced to a term of imprisonment of not less than
24 60 months, the alien shall be fined under such title,
25 and imprisoned not more than 20 years, or both;

1 “(4) was convicted for 3 felonies, with the con-
2 victions occurring on different dates before such re-
3 moval or departure, the alien shall be fined under
4 such title, and imprisoned not more than 20 years,
5 or both; or

6 “(5) was convicted, before such removal or de-
7 parture, for murder, rape, kidnapping, or a felony
8 offense described in chapter 77 (relating to peonage
9 and slavery) or 113B (relating to terrorism) of such
10 title, the alien shall be fined under such title, and
11 imprisoned not more than 20 years, or both.

12 “(c) REENTRY AFTER REPEATED REMOVAL.—Any
13 alien who has been denied admission, excluded, deported,
14 or removed 3 or more times and thereafter enters, at-
15 tempts to enter, crosses the border to, attempts to cross
16 the border to, or is at any time found in the United States,
17 shall be fined under title 18, United States Code, and im-
18 prisoned not more than 10 years, or both.

19 “(d) PROOF OF PRIOR CONVICTIONS.—The prior
20 convictions described in subsection (b) are elements of the
21 offenses described in that subsection, and the penalties in
22 such subsection shall apply only in cases in which the con-
23 viction or convictions that form the basis for the additional
24 penalty are—

1 “(1) alleged in the indictment or information;
2 and

3 “(2) proven beyond a reasonable doubt at trial
4 or admitted by the defendant under oath as part of
5 a plea agreement.

6 “(e) AFFIRMATIVE DEFENSES.—It shall be an af-
7 firmative defense to a violation of this section that—

8 “(1) prior to the alleged violation, the alien had
9 sought and received the express consent of the Sec-
10 retary of Homeland Security to reapply for admis-
11 sion into the United States; or

12 “(2) at the time of the prior exclusion, deporta-
13 tion, removal, or denial of admission alleged in the
14 violation, the alien had not yet reached 18 years of
15 age and had not been convicted of a crime or adju-
16 dicated a delinquent minor by a court of the United
17 States, or a court of a state or territory, for conduct
18 that would constitute a felony if committed by an
19 adult.

20 “(f) LIMITATION ON COLLATERAL ATTACK ON UN-
21 DERLYING DEPORTATION ORDER.—In a criminal pro-
22 ceeding under this section, an alien may not challenge the
23 validity of the deportation order described in subsection
24 (a) or subsection (c) unless the alien demonstrates that—

1 “(1) the alien exhausted any administrative
2 remedies that may have been available to seek relief
3 against the order;

4 “(2) the deportation proceedings at which the
5 order was issued improperly deprived the alien of the
6 opportunity for judicial review; and

7 “(3) the entry of the order was fundamentally
8 unfair.

9 “(g) REENTRY OF ALIEN REMOVED PRIOR TO COM-
10 PLETION OF TERM OF IMPRISONMENT.—Any alien re-
11 moved pursuant to section 241(a)(4) who enters, attempts
12 to enter, crosses the border to, attempts to cross the bor-
13 der to, or is at any time found in, the United States shall
14 be incarcerated for the remainder of the sentence of im-
15 prisonment which was pending at the time of deportation
16 without any reduction for parole or supervised release un-
17 less the alien affirmatively demonstrates that the Sec-
18 retary of Homeland Security has expressly consented to
19 the alien’s reentry or the alien is prima facie eligible for
20 protection from removal. Such alien shall be subject to
21 such other penalties relating to the reentry of removed
22 aliens as may be available under this section or any other
23 provision of law.

24 “(h) LIMITATION.—It is not aiding and abetting a
25 violation of this section for an individual to provide an

1 alien with emergency humanitarian assistance, including
2 emergency medical care and food, or to transport the alien
3 to a location where such assistance can be rendered with-
4 out compensation or the expectation of compensation.

5 “(i) DEFINITIONS.—In this section:

6 “(1) FELONY.—The term ‘felony’ means any
7 criminal offense punishable by a term of imprison-
8 ment of more than 1 year under the laws of the
9 United States, any State, or a foreign government.

10 “(2) MISDEMEANOR.—The term ‘misdemeanor’
11 means any criminal offense punishable by a term of
12 imprisonment of not more than 1 year under the ap-
13 plicable laws of the United States, any State, or a
14 foreign government.

15 “(3) REMOVAL.—The term ‘removal’ includes
16 any denial of admission, exclusion, deportation, or
17 removal, or any agreement by which an alien stipu-
18 lates or agrees to exclusion, deportation, or removal.

19 “(4) STATE.—The term ‘State’ means a State
20 of the United States, the District of Columbia, and
21 any commonwealth, territory, or possession of the
22 United States.”.

23 **SEC. 3706. PENALTIES RELATED TO REMOVAL.**

24 (a) PENALTIES RELATING TO VESSELS AND AIR-
25 CRAFT.—Section 243(c) (8 U.S.C. 1253(c)) is amended—

1 (1) by striking “Attorney General” each place
2 such term appears and inserting “Secretary of
3 Homeland Security”; and

4 (2) by striking “Commissioner” each place such
5 term appears and inserting “Secretary of Homeland
6 Security”; and

7 (3) in paragraph (1)—

8 (A) in subparagraph (A), by striking
9 “\$2,000” and inserting “\$5,000”;

10 (B) in subparagraph (B), by striking
11 “\$5,000” and inserting “\$10,000”;

12 (C) by amending subparagraph (C) to read
13 as follows:

14 “(C) COMPROMISE.—The Secretary of
15 Homeland Security, in the Secretary’s
16 unreviewable discretion and upon the receipt of
17 a written request, may mitigate the monetary
18 penalties required under this subsection for
19 each alien stowaway to an amount equal to not
20 less than \$2,000, upon such terms that the Sec-
21 retary determines to be appropriate.”; and

22 (D) by inserting at the end the following:

23 “(D) EXCEPTION.—A person, acting with-
24 out compensation or the expectation of com-

1 pensation, is not subject to penalties under this
2 paragraph if the person is—

3 “(i) providing, or attempting to pro-
4 vide, an alien with humanitarian assist-
5 ance, including emergency medical care or
6 food or water; or

7 “(ii) transporting the alien to a loca-
8 tion where such humanitarian assistance
9 can be rendered without compensation or
10 the expectation of compensation.”.

11 **SEC. 3707. REFORM OF PASSPORT, VISA, AND IMMIGRATION**

12 **FRAUD OFFENSES.**

13 (a) **TRAFFICKING IN PASSPORTS.**—Section 1541 of
14 title 18, United States Code, is amended to read as fol-
15 lows:

16 **“§ 1541. Trafficking in passports**

17 “(a) **MULTIPLE PASSPORTS.**—Subject to subsection
18 (b), any person who, during any period of 3 years or less,
19 knowingly—

20 “(1) and without lawful authority produces,
21 issues, or transfers 3 or more passports;

22 “(2) forges, counterfeits, alters, or falsely
23 makes 3 or more passports;

24 “(3) secures, possesses, uses, receives, buys,
25 sells, or distributes 3 or more passports, knowing

1 the passports to be forged, counterfeited, altered,
2 falsely made, stolen, procured by fraud, or produced
3 or issued without lawful authority; or

4 “(4) completes, mails, prepares, presents, signs,
5 or submits 3 or more applications for a United
6 States passport, knowing the applications to contain
7 any materially false statement or representation,
8 shall be fined under this title, imprisoned not more than
9 20 years, or both.

10 “(b) USE IN A TERRORISM OFFENSE.—Any person
11 who commits an offense described in subsection (a) to fa-
12 cilitate an act of international terrorism (as defined in sec-
13 tion 2331) shall be fined under this title, imprisoned not
14 more than 25 years, or both.

15 “(c) PASSPORT MATERIALS.—Any person who know-
16 ingly and without lawful authority produces, buys, sells,
17 possesses, or uses any official material (or counterfeit of
18 any official material) used to make 10 or more passports,
19 including any distinctive paper, seal, hologram, image,
20 text, symbol, stamp, engraving, or plate, shall be fined
21 under this title, imprisoned not more than 20 years, or
22 both.”.

23 (b) FALSE STATEMENT IN AN APPLICATION FOR A
24 PASSPORTS.—Section 1542 of title 18, United States
25 Code, is amended to read as follows:

1 **“§ 1542. False statement in an application for a pass-**
2 **port**

3 “(a) IN GENERAL.—Any person who knowingly
4 makes any material false statement or representation in
5 an application for a United States passport, or mails, pre-
6 pares, presents, or signs an application for a United
7 States passport knowing the application to contain any
8 material false statement or representation, shall be fined
9 under this title, imprisoned not more than 25 years (if
10 the offense was committed to facilitate an act of inter-
11 national terrorism (as defined in section 2331 of this
12 title)), 20 years (if the offense was committed to facilitate
13 a drug trafficking crime (as defined in section 929(a) of
14 this title)), or 15 years (in the case of any other offense)
15 or both.

16 “(b) VENUE.—

17 “(1) IN GENERAL.—An offense under sub-
18 section (a) may be prosecuted in any district—

19 “(A) in which the false statement or rep-
20 resentation was made or the application for a
21 United States passport was prepared or signed;
22 or

23 “(B) in which or to which the application
24 was mailed or presented.

25 “(2) OFFENSES OUTSIDE THE UNITED
26 STATES.—An offense under subsection (a) involving

1 an application prepared and adjudicated outside the
2 United States may be prosecuted in the district in
3 which the resultant passport was or would have been
4 produced.

5 “(c) SAVINGS CLAUSE.—Nothing in this section may
6 be construed to limit the venue otherwise available under
7 sections 3237 and 3238 of this title.”.

8 (c) MISUSE OF A PASSPORT.—Section 1544 of title
9 18, United States Code, is amended to read as follows:

10 **“§ 1544. Misuse of a passport**

11 “Any person who knowingly—

12 “(1) misuses for their own purposes any pass-
13 port issued or designed for the use of another;

14 “(2) uses any passport in violation of the laws,
15 regulations, or rules governing the issuance and use
16 of the passport;

17 “(3) secures, possesses, uses, receives, buys,
18 sells, or distributes any passport knowing the pass-
19 port to be forged, counterfeited, altered, falsely
20 made, procured by fraud, or produced or issued
21 without lawful authority; or

22 “(4) substantially violates the terms and condi-
23 tions of any safe conduct duly obtained and issued
24 under the authority of the United States,

1 shall be fined under this title, imprisoned not more than
2 25 years (if the offense was committed to facilitate an act
3 of international terrorism (as defined in section 2331 of
4 this title)), 20 years (if the offense was committed to fa-
5 cilitate a drug trafficking crime (as defined in section
6 929(a) of this title)) or 15 years (in the case of any other
7 offense), or both.”.

8 (d) SCHEMES TO PROVIDE FRAUDULENT IMMIGRA-
9 TION SERVICES.—Section 1545 of title 18, United States
10 Code, is amended to read as follows:

11 **“§ 1545. Schemes to provide fraudulent immigration**
12 **services**

13 “(a) IN GENERAL.—Any person who knowingly exe-
14 cutes a scheme or artifice, in connection with any matter
15 that is authorized by or arises under any Federal immigra-
16 tion law or any matter the offender claims or represents
17 is authorized by or arises under any Federal immigration
18 law, to—

19 “(1) defraud any person; or

20 “(2) obtain or receive money or anything else of
21 value from any person by means of false or fraudu-
22 lent pretenses, representations, or promises,

23 shall be fined under this title, imprisoned not more than
24 10 years, or both.

1 “(b) MISREPRESENTATION.—Any person who know-
2 ingly and falsely represents that such person is an attor-
3 ney or an accredited representative (as that term is de-
4 fined in section 1292.1 of title 8, Code of Federal Regula-
5 tions (or any successor regulation)) in any matter arising
6 under any Federal immigration law shall be fined under
7 this title, imprisoned not more than 15 years, or both.”.

8 (e) IMMIGRATION AND VISA FRAUD.—Section 1546
9 of title 18, United States Code, is amended—

10 (1) by amending the section heading to read as
11 follows:

12 **“§ 1546. Immigration and visa fraud”;**

13 and

14 (2) by striking subsections (b) and (c) and in-
15 serting the following:

16 “(b) TRAFFICKING.—Any person who, during any pe-
17 riod of 3 years or less, knowingly—

18 “(1) and without lawful authority produces,
19 issues, or transfers 3 or more immigration docu-
20 ments;

21 “(2) forges, counterfeits, alters, or falsely
22 makes 3 or more immigration documents;

23 “(3) secures, possesses, uses, buys, sells, or dis-
24 tributes 3 or more immigration documents, knowing
25 the immigration documents to be forged, counter-

1 feited, altered, stolen, falsely made, procured by
2 fraud, or produced or issued without lawful author-
3 ity; or

4 “(4) completes, mails, prepares, presents, signs,
5 or submits 3 or more immigration documents know-
6 ing the documents to contain any materially false
7 statement or representation,

8 shall be fined under this title, imprisoned not more than
9 20 years, or both.

10 “(c) IMMIGRATION DOCUMENT MATERIALS.—Any
11 person who knowingly and without lawful authority pro-
12 duces, buys, sells, possesses, or uses any official material
13 (or counterfeit of any official material) used to make 10
14 or more immigration documents, including any distinctive
15 paper, seal, hologram, image, text, symbol, stamp, engrav-
16 ing, or plate, shall be fined under this title, imprisoned
17 not more than 20 years, or both.”.

18 (f) ALTERNATIVE IMPRISONMENT MAXIMUM FOR
19 CERTAIN OFFENSES.—Section 1547 of title 18, United
20 States Code, is amended—

21 (1) in the matter preceding paragraph (1), by
22 striking “(other than an offense under section
23 1545)”;

24 (2) in paragraph (1), by striking “15” and in-
25 serting “20”; and

1 (3) in paragraph (2), by striking “20” and in-
2 serting “25”.

3 (g) AUTHORIZED LAW ENFORCEMENT ACTIVITIES.—
4 Chapter 75 of title 18, United States Code, is amended
5 by adding after section 1547 the following:

6 **“§ 1548. Authorized law enforcement activities**

7 “Nothing in this chapter may be construed to pro-
8 hibit—

9 “(1) any lawfully authorized investigative, pro-
10 tective, or intelligence activity of a law enforcement
11 agency of the United States, a State, or a political
12 subdivision of a State, or an intelligence agency of
13 the United States; or

14 “(2) any activity authorized under title V of the
15 Organized Crime Control Act of 1970 (Public Law
16 91–452; 84 Stat. 933).”.

17 (h) TABLE OF SECTIONS AMENDMENT.—The table
18 of sections for chapter 75 of title 18, United States Code,
19 is amended to read as follows:

“Sec.

“1541. Trafficking in passports.

“1542. False statement in an application for a passport.

“1543. Forgery or false use of a passport.

“1544. Misuse of a passport.

“1545. Schemes to provide fraudulent immigration services.

“1546. Immigration and visa fraud.

“1547. Alternative imprisonment maximum for certain offenses.

“1548. Authorized law enforcement activities.”.

1 **SEC. 3708. COMBATING SCHEMES TO DEFRAUD ALIENS.**

2 (a) REGULATIONS, FORMS, AND PROCEDURES.—The
3 Secretary and the Attorney General, for matters within
4 their respective jurisdictions arising under the immigra-
5 tion laws, shall promulgate appropriate regulations, forms,
6 and procedures defining the circumstances in which—

7 (1) persons submitting applications, petitions,
8 motions, or other written materials relating to immi-
9 gration benefits or relief from removal under the im-
10 migration laws will be required to identify who
11 (other than immediate family members) assisted
12 them in preparing or translating the immigration
13 submissions; and

14 (2) any person or persons who received com-
15 pensation (other than a nominal fee for copying,
16 mailing, or similar services) in connection with the
17 preparation, completion, or submission of such mate-
18 rials will be required to sign the form as a preparer
19 and provide identifying information.

20 (b) CIVIL INJUNCTIONS AGAINST IMMIGRATION
21 SERVICE PROVIDER.—The Attorney General may com-
22 mence a civil action in the name of the United States to
23 enjoin any immigration service provider from further en-
24 gaging in any fraudulent conduct that substantially inter-
25 feres with the proper administration of the immigration
26 laws or who willfully misrepresents such provider's legal

1 authority to provide representation before the Department
2 of Justice or Department.

3 (c) DEFINITIONS.—In this section:

4 (1) IMMIGRATION LAWS.—The term “immigra-
5 tion laws” has the meaning given that term in sec-
6 tion 101(a)(17) of the Immigration and Nationality
7 Act (8 U.S.C. 1101(a)(17)).

8 (2) IMMIGRATION SERVICE PROVIDER.—The
9 term “immigration service provider” means any indi-
10 vidual or entity (other than an attorney or individual
11 otherwise authorized to provide representation in im-
12 migration proceedings as provided in Federal regula-
13 tion) who, for a fee or other compensation, provides
14 any assistance or representation to aliens in relation
15 to any filing or proceeding relating to the alien
16 which arises, or which the provider claims to arise,
17 under the immigration laws, executive order, or pres-
18 idential proclamation.

19 **SEC. 3709. INADMISSIBILITY AND REMOVAL FOR PASSPORT**
20 **AND IMMIGRATION FRAUD OFFENSES.**

21 (a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) (8
22 U.S.C. 1182(a)(2)(A)(i)) is amended—

23 (1) in subclause (I), by striking “, or” at the
24 end and inserting a semicolon;

1 (2) in subclause (II), by striking the comma at
2 the end and inserting “; or”; and

3 (3) by inserting after subclause (II) the fol-
4 lowing:

5 “(III) a violation of section 1541,
6 1545, and subsection (b) of section
7 1546 of title 18, United States
8 Code,”.

9 (b) REMOVAL.—Section 237(a)(3)(B)(iii) (8 U.S.C.
10 1227(a)(3)(B)(iii)) is amended to read as follows:

11 “(iii) of a violation of section 1541,
12 1545, and subsection (b) of section 1546
13 of title 18, United States Code,”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 subsections (a) and (b) shall apply to proceedings pending
16 on or after the date of the enactment of this Act, with
17 respect to conduct occurring on or after that date.

18 **SEC. 3710. DIRECTIVES RELATED TO PASSPORT AND DOCU-**
19 **MENT FRAUD.**

20 (a) DIRECTIVE TO THE UNITED STATES SEN-
21 TENCING COMMISSION.—

22 (1) IN GENERAL.—Pursuant to the authority
23 under section 994 of title 28, United States Code,
24 the United States Sentencing Commission shall pro-
25 mulgate or amend the sentencing guidelines, policy

1 statements, and official commentaries, if appro-
2 priate, related to passport fraud offenses, including
3 the offenses described in chapter 75 of title 18,
4 United States Code, as amended by section 3407, to
5 reflect the serious nature of such offenses.

6 (2) REPORT.—Not later than 1 year after the
7 date of the enactment of this Act, the United States
8 Sentencing Commission shall submit a report on the
9 implementation of this subsection to—

10 (A) the Committee on the Judiciary of the
11 Senate; and

12 (B) the Committee on the Judiciary of the
13 House of Representatives.

14 (b) PROTECTION FOR LEGITIMATE REFUGEES AND
15 ASYLUM SEEKERS.—

16 (1) IN GENERAL.—

17 (A) REQUIREMENT FOR GUIDELINES.—

18 The Attorney General, in consultation with the
19 Secretary, shall develop binding prosecution
20 guidelines for Federal prosecutors to ensure
21 that each prosecution of an alien seeking entry
22 into the United States by fraud is consistent
23 with the United States treaty obligations under
24 Article 31(1) of the Convention Relating to the
25 Status of Refugees, done at Geneva July 28,

1 1951 (as made applicable by the Protocol Relat-
2 ing to the Status of Refugees, done at New
3 York January 31, 1967 (19 UST 6223)).

4 (B) NO PRIVATE RIGHT OF ACTION.—The
5 guidelines developed pursuant to subparagraph
6 (A), and any internal office procedures related
7 to such guidelines—

8 (i) are intended solely for the guid-
9 ance of attorneys of the United States; and

10 (ii) are not intended to, do not, and
11 may not be relied upon to, create any right
12 or benefit, substantive or procedural, en-
13 forceable at law by any party in any ad-
14 ministrative, civil, or criminal matter.

15 (2) PROTECTION OF VULNERABLE PERSONS.—

16 A person described in paragraph (3) may not be
17 prosecuted under chapter 75 of title 18, United
18 States Code, or under section 275 or 276 of the Im-
19 migration and Nationality Act (8 U.S.C. 1325 and
20 1326), in connection with the person's entry or at-
21 tempted entry into the United States until after the
22 date on which the person's application for such pro-
23 tection, classification, or status has been adjudicated
24 and denied in accordance with the Immigration and
25 Nationality Act (8 U.S.C. 1101 et seq.).

1 (3) PERSONS SEEKING PROTECTION, CLASSI-
2 FICATION, OR STATUS.—A person described in this
3 paragraph is a person who—

4 (A) is seeking protection, classification, or
5 status; and

6 (B)(i) has filed an application for asylum
7 under section 208 of the Immigration and Na-
8 tionality Act (8 U.S.C. 1158), withholding of
9 removal under section 241(b)(3) of such Act (8
10 U.S.C. 1231(b)(3)), or relief under the Conven-
11 tion against Torture and Other Cruel, Inhuman
12 or Degrading Treatment or Punishment, done
13 at New York, December 10, 1994, pursuant to
14 title 8, Code of Federal Regulations;

15 (ii) indicates immediately after apprehen-
16 sion, that he or she intends to apply for such
17 asylum, withholding of removal, or relief and
18 promptly files the appropriate application;

19 (iii) has been referred for a credible fear
20 interview, a reasonable fear interview, or an
21 asylum-only hearing under section 235 of the
22 Immigration and Nationality Act (8 U.S.C.
23 1225) or part 208 of title 8, Code of Federal
24 Regulations; or

1 (iv) has filed an application for classifica-
2 tion or status under—

3 (I) subparagraph (T) or (U) of para-
4 graph (15), paragraph (27)(J), or para-
5 graph (51) of section 101(a) of the Immi-
6 gration and Nationality Act (8 U.S.C.
7 1101(a)); or

8 (II) section 216(c)(4)(C) or
9 240A(b)(2) of such Act (8 U.S.C.
10 1186a(c)(4)(C) and 1229b(b)(2)).

11 **SEC. 3711. INADMISSIBLE ALIENS.**

12 (a) DETERRING ALIENS ORDERED REMOVED FROM
13 REMAINING IN THE UNITED STATES UNLAWFULLY.—
14 Section 212(a)(9)(A) (8 U.S.C. 1182(a)(9)(A)) is amend-
15 ed—

16 (1) in clause (i), by striking “seeks admission
17 within 5 years of the date of such removal (or within
18 20 years” and inserting “seeks admission not later
19 than 5 years after the date of the alien’s removal (or
20 not later than 20 years after the alien’s removal”;
21 and

22 (2) in clause (ii), by striking “seeks admission
23 within 10 years of the date of such alien’s departure
24 or removal (or within 20 years of” and inserting
25 “seeks admission not later than 10 years after the

1 date of the alien's departure or removal (or not later
2 than 20 years after''.

3 (b) BIOMETRIC SCREENING.—Section 212 (8 U.S.C.
4 1182) is amended—

5 (1) in subsection (a)(7), by adding at the end
6 the following:

7 “(C) WITHHOLDING INFORMATION.—Ex-
8 cept as provided in subsection (d)(2), any alien
9 who willfully, through his or her own fault, re-
10 fuses to comply with a lawful request for bio-
11 metric information is inadmissible.”; and

12 (2) in subsection (d), by inserting after para-
13 graph (1) the following:

14 “(2) The Secretary may waive the application
15 of subsection (a)(7)(C) for an individual alien or a
16 class of aliens.”.

17 (c) PRECLUDING ADMISSIBILITY OF ALIENS CON-
18 VICTED OF SERIOUS CRIMINAL OFFENSES AND DOMESTIC
19 VIOLENCE, STALKING, CHILD ABUSE AND VIOLATION OF
20 PROTECTION ORDERS.—

21 (1) INADMISSIBILITY ON CRIMINAL AND RE-
22 LATED GROUNDS; WAIVERS.—Section 212 (8 U.S.C.
23 1182), as amended by section 3302, is further
24 amended—

1 (A) in subsection (a)(2), as amended by
2 sections 3401 and 3402, is further amended by
3 inserting after subparagraph (J) the following:

4 “(K) CRIMES OF DOMESTIC VIOLENCE,
5 STALKING, OR VIOLATION OF PROTECTIVE OR-
6 DERS; CRIMES AGAINST CHILDREN.—

7 “(i) DOMESTIC VIOLENCE, STALKING,
8 AND CHILD ABUSE.—

9 “(I) IN GENERAL.—Any alien
10 who has been convicted of a crime of
11 domestic violence, a crime of stalking,
12 or a crime of child abuse, child ne-
13 glect, or child abandonment, provided
14 the alien served at least 1 year impris-
15 onment for the crime, or provided the
16 alien was convicted of offenses consti-
17 tuting more than 1 such crime, not
18 arising out of a single scheme of
19 criminal misconduct, is inadmissible.

20 “(II) CRIME OF DOMESTIC VIO-
21 LENCE DEFINED.—In this clause, the
22 term ‘crime of domestic violence’
23 means any crime of violence (as de-
24 fined in section 16 of title 18, United
25 States Code) against a person com-

1 mitted by a current or former spouse
2 of the person, by an individual with
3 whom the person shares a child in
4 common, by an individual who is co-
5 habiting with or has cohabited with
6 the person as a spouse, by an indi-
7 vidual similarly situated to a spouse
8 of the person under the domestic or
9 family violence laws of the jurisdiction
10 where the offense occurs, or by any
11 other individual against a person who
12 is protected from that individual's
13 acts under the domestic or family vio-
14 lence laws of the United States or any
15 State, Indian tribal government, or
16 unit of local or foreign government.

17 “(ii) VIOLATORS OF PROTECTION OR-
18 DERS.—

19 “(I) IN GENERAL.—Any alien
20 who at any time is enjoined under a
21 protection order issued by a court and
22 whom the court determines has en-
23 gaged in conduct that constitutes
24 criminal contempt of the portion of a
25 protection order that involves protec-

1 tion against credible threats of vio-
2 lence, repeated harassment, or bodily
3 injury to the person or persons for
4 whom the protection order was issued,
5 is inadmissible.

6 “(II) PROTECTION ORDER DE-
7 FINED.—In this clause, the term ‘pro-
8 tection order’ means any injunction
9 issued for the purpose of preventing
10 violent or threatening acts of domestic
11 violence, including temporary or final
12 orders issued by civil or criminal
13 courts (other than support or child
14 custody orders or provisions) whether
15 obtained by filing an independent ac-
16 tion or as an independent order in an-
17 other proceeding.

18 “(iii) APPLICABILITY.—This subpara-
19 graph shall not apply to an alien who has
20 been battered or subjected to extreme cru-
21 elty and who is not and was not the pri-
22 mary perpetrator of violence in the rela-
23 tionship, upon a determination by the At-
24 torney General or the Secretary of Home-
25 land Security that—

1 “(I) the alien was acting in self-
2 defense;

3 “(II) the alien was found to have
4 violated a protection order intended to
5 protect the alien; or

6 “(III) the alien committed, was
7 arrested for, was convicted of, or pled
8 guilty to committing a crime that did
9 not result in serious bodily injury.”;

10 (B) in subsection (h)—

11 (i) by striking “The Attorney General
12 may, in his discretion, waive the applica-
13 tion of subparagraphs (A)(i)(I), (B), (D),
14 and (E) of subsection (a)(2)” and inserting
15 “The Attorney General or the Secretary of
16 Homeland Security may waive the applica-
17 tion of subparagraphs (A)(i)(I), (B), (D),
18 and (E) of subsection (a)(2)”;

19 (ii) by inserting “or the Secretary of
20 Homeland Security” after “the Attorney
21 General” each place that term appears.

22 (2) EFFECTIVE DATE.—The amendments made
23 by this subsection shall apply to any acts that oc-
24 curred on or after the date of the enactment of this
25 Act.

1 **SEC. 3712. ORGANIZED AND ABUSIVE HUMAN SMUGGLING**
2 **ACTIVITIES.**

3 (a) **ENHANCED PENALTIES.**—

4 (1) **IN GENERAL.**—Title II (8 U.S.C. 1151 et
5 seq.) is amended by adding at the end the following:

6 **“SEC. 295. ORGANIZED HUMAN SMUGGLING.**

7 “(a) **PROHIBITED ACTIVITIES.**—Whoever, while act-
8 ing for profit or other financial gain, knowingly directs
9 or participates in an effort or scheme to assist or cause
10 5 or more persons (other than a parent, spouse or child
11 of the offender)—

12 “(1) to enter, attempt to enter, or prepare to
13 enter the United States—

14 “(A) by fraud, falsehood, or other corrupt
15 means;

16 “(B) at any place other than a port or
17 place of entry designated by the Secretary; or

18 “(C) in a manner not prescribed by the im-
19 migration laws and regulations of the United
20 States; or

21 “(2) to travel by air, land, or sea toward the
22 United States (whether directly or indirectly)—

23 “(A) knowing that the persons seek to
24 enter or attempt to enter the United States
25 without lawful authority; and

1 “(B) with the intent to aid or further such
2 entry or attempted entry; or

3 “(3) to be transported or moved outside of the
4 United States—

5 “(A) knowing that such persons are aliens
6 in unlawful transit from 1 country to another
7 or on the high seas; and

8 “(B) under circumstances in which the
9 persons are in fact seeking to enter the United
10 States without official permission or legal au-
11 thority;

12 shall be punished as provided in subsection (c) or
13 (d).

14 “(b) CONSPIRACY AND ATTEMPT.—Any person who
15 attempts or conspires to violate subsection (a) of this sec-
16 tion shall be punished in the same manner as a person
17 who completes a violation of such subsection.

18 “(c) BASE PENALTY.—Except as provided in sub-
19 section (d), any person who violates subsection (a) or (b)
20 shall be fined under title 18, imprisoned for not more than
21 20 years, or both.

22 “(d) ENHANCED PENALTIES.—Any person who vio-
23 lates subsection (a) or (b) shall—

24 “(1) in the case of a violation during and in re-
25 lation to which a serious bodily injury (as defined in

1 section 1365 of title 18) occurs to any person, be
2 fined under title 18, imprisoned for not more than
3 30 years, or both;

4 “(2) in the case of a violation during and in re-
5 lation to which the life of any person is placed in
6 jeopardy, be fined under title 18, imprisoned for not
7 more than 30 years, or both;

8 “(3) in the case of a violation involving 10 or
9 more persons, be fined under title 18, imprisoned for
10 not more than 30 years, or both;

11 “(4) in the case of a violation involving the
12 bribery or corruption of a U.S. or foreign govern-
13 ment official, be fined under title 18, imprisoned for
14 not more than 30 years, or both;

15 “(5) in the case of a violation involving robbery
16 or extortion (as those terms are defined in para-
17 graph (1) or (2), respectively, of section 1951(b)) be
18 fined under title 18, imprisoned for not more than
19 30 years, or both;

20 “(6) in the case of a violation during and in re-
21 lation to which any person is subjected to an invol-
22 untary sexual act (as defined in section 2246(2) of
23 title 18), be fined under title 18, imprisoned for not
24 more than 30 years, or both; or

1 “(7) in the case of a violation resulting in the
2 death of any person, be fined under title 18, impris-
3 oned for any term of years or for life, or both.

4 “(e) **LAWFUL AUTHORITY DEFINED.**—

5 “(1) **IN GENERAL.**—In this section, the term
6 ‘lawful authority’—

7 “(A) means permission, authorization, or
8 license that is expressly provided for in the im-
9 migration laws of the United States or accom-
10 panying regulations; and

11 “(B) does not include any such authority
12 secured by fraud or otherwise obtained in viola-
13 tion of law, nor does it include authority
14 sought, but not approved.

15 “(2) **APPLICATION TO TRAVEL OR ENTRY.**—No
16 alien shall be deemed to have lawful authority to
17 travel to or enter the United States if such travel or
18 entry was, is, or would be in violation of law.

19 “(f) **EFFORT OR SCHEME.**—For purposes of this sec-
20 tion, ‘effort or scheme to assist or cause 5 or more per-
21 sons’ does not require that the 5 or more persons enter,
22 attempt to enter, prepare to enter, or travel at the same
23 time so long as the acts are completed within 1 year.

1 **“SEC. 296. UNLAWFULLY HINDERING IMMIGRATION, BOR-**
2 **DER, AND CUSTOMS CONTROLS.**

3 “(a) **ILLICIT SPOTTING.**—Whoever knowingly trans-
4 mits to another person the location, movement, or activi-
5 ties of any Federal, State, or tribal law enforcement agen-
6 cy with the intent to further a Federal crime relating to
7 United States immigration, customs, controlled sub-
8 stances, agriculture, monetary instruments, or other bor-
9 der controls shall be fined under title 18, imprisoned not
10 more than 10 years, or both.

11 “(b) **DESTRUCTION OF UNITED STATES BORDER**
12 **CONTROLS.**—Whoever knowingly and without lawful au-
13 thorization destroys, alters, or damages any fence, barrier,
14 sensor, camera, or other physical or electronic device de-
15 ployed by the Federal government to control the border
16 or a port of entry or otherwise seeks to construct, exca-
17 vate, or make any structure intended to defeat, circumvent
18 or evade any such fence, barrier, sensor camera, or other
19 physical or electronic device deployed by the Federal gov-
20 ernment to control the border or a port of entry shall be
21 fined under title 18, imprisoned not more than 10 years,
22 or both, and if, at the time of the offense, the person uses
23 or carries a firearm or who, in furtherance of any such
24 crime, possesses a firearm, that person shall be fined
25 under title 18, imprisoned not more than 20 years, or
26 both.

1 “(c) CONSPIRACY AND ATTEMPT.—Any person who
2 attempts or conspires to violate subsection (a) or (b) of
3 this section shall be punished in the same manner as a
4 person who completes a violation of such subsection.”.

5 (2) TABLE OF CONTENTS AMENDMENT.—The
6 table of contents is amended by adding after the
7 item relating to section 294 the following:

“Sec. 295. Organized human smuggling.

“Sec. 296. Unlawfully hindering immigration, border, and customs controls.”.

8 (b) PROHIBITING CARRYING OR USE OF A FIREARM
9 DURING AND IN RELATION TO AN ALIEN SMUGGLING
10 CRIME.—Section 924(c) of title 18, United States Code,
11 is amended—

12 (1) in paragraph (1)—

13 (A) in subparagraph (A), by inserting “,
14 alien smuggling crime,” after “crime of vio-
15 lence” each place that term appears; and

16 (B) in subparagraph (D)(ii), by inserting
17 “, alien smuggling crime,” after “crime of vio-
18 lence”; and

19 (2) by adding at the end the following:

20 “(6) For purposes of this subsection, the term ‘alien
21 smuggling crime’ means any felony punishable under sec-
22 tion 274(a), 277, or 278 of the Immigration and Nation-
23 ality Act (8 U.S.C. 1324(a), 1327, and 1328).”.

1 (c) STATUTE OF LIMITATIONS.—Section 3298 of title
2 18, United States Code, is amended by inserting “, 295,
3 296, or 297” after “274(a)”.

4 **SEC. 3713. PREVENTING CRIMINALS FROM RENOUNCING**
5 **CITIZENSHIP DURING WARTIME.**

6 Section 349(a) (8 U.S.C. 1481(a)) is amended—

7 (1) by striking paragraph (6) ; and

8 (2) redesignating paragraph (7) as paragraph
9 (6).

10 **SEC. 3714. DIPLOMATIC SECURITY SERVICE.**

11 Paragraph (1) of section 37(a) of the State Depart-
12 ment Basic Authorities Act of 1956 (22 U.S.C. 2709(a))
13 is amended to read as follows:

14 “(1) conduct investigations concerning—

15 “(A) illegal passport or visa issuance or
16 use;

17 “(B) identity theft or document fraud af-
18 fecting or relating to the programs, functions,
19 and authorities of the Secretary of State;

20 “(C) violations of chapter 77 of title 18,
21 United States Code; and

22 “(D) Federal offenses committed within
23 the special maritime and territorial jurisdiction
24 of the United States (as defined in section 7(9)
25 of title 18, United States Code);”.

1 **SEC. 3715. SECURE ALTERNATIVES PROGRAMS.**

2 (a) IN GENERAL.—The Secretary shall establish se-
3 cure alternatives programs that incorporate case manage-
4 ment services in each field office of the Department to
5 ensure appearances at immigration proceedings and public
6 safety.

7 (b) CONTRACT AUTHORITY.—The Secretary shall
8 contract with nongovernmental community based organi-
9 zations to conduct screening of detainees, provide appear-
10 ance assistance services, and operate community-based su-
11 pervision programs. Secure alternatives shall offer a con-
12 tinuum of supervision mechanisms and options including
13 community support, depending on an assessment of each
14 individual's circumstances. The Secretary may contract
15 with nongovernmental organizations to implement secure
16 alternatives that maintain custody over the alien.

17 (c) INDIVIDUALIZED DETERMINATIONS.—In deter-
18 mining whether to use secure alternatives, the Secretary
19 shall make an individualized determination, and for each
20 individual placed on secure alternatives shall review the
21 level of supervision on a monthly basis. Secure alternatives
22 shall not be used when release on bond or recognizance
23 is determined to be a sufficient measure to ensure appear-
24 ances at immigration proceedings and public safety.

25 (d) CUSTODY.—The Secretary may use secure alter-
26 natives programs to maintain custody over any alien de-

1 tained under this Act except for aliens detained under sec-
2 tion 236A of the Immigration and Nationality Act (8
3 U.S.C. 1226a). If an individual is not eligible for release
4 from custody or detention, the Secretary shall consider the
5 alien for placement in secure alternatives that maintain
6 custody over the alien, including the use of electronic ankle
7 devices.

8 **SEC. 3716. OVERSIGHT OF DETENTION FACILITIES.**

9 (a) DEFINITIONS.—In this section:

10 (1) APPLICABLE STANDARDS.—The term “ap-
11 plicable standards” means the most recent version of
12 detention standards and detention-related policies
13 issued by the Secretary or the Director of U.S. Im-
14 migration and Customs Enforcement.

15 (2) DETENTION FACILITY.—The term “deten-
16 tion facility” means a Federal, State, or local gov-
17 ernment facility, or a privately owned and operated
18 facility, that is used, in whole or in part, to hold in-
19 dividuals under the authority of the Director of U.S.
20 Immigration and Customs Enforcement, including
21 facilities that hold such individuals under a contract
22 or agreement with the Director.

23 (b) DETENTION REQUIREMENTS.—The Secretary
24 shall ensure that all persons detained pursuant to the Im-
25 migration and Nationality Act (8 U.S.C. 1101 et seq.) are

1 treated humanely and benefit from the protections set
2 forth in this section.

3 (c) OVERSIGHT REQUIREMENTS.—

4 (1) ANNUAL INSPECTION.—All detention facili-
5 ties shall be inspected by the Secretary on a regular
6 basis, but not less than annually, for compliance
7 with applicable detention standards issued by the
8 Secretary and other applicable regulations.

9 (2) ROUTINE OVERSIGHT.—In addition to an-
10 nual inspections, the Secretary shall conduct routine
11 oversight of detention facilities, including unan-
12 nounced inspections.

13 (3) AVAILABILITY OF RECORDS.—All detention
14 facility contracts, memoranda of agreement, and
15 evaluations and reviews shall be considered records
16 for purposes of section 552(f)(2) of title 5, United
17 States Code.

18 (4) CONSULTATION.—The Secretary shall seek
19 input from nongovernmental organizations regarding
20 their independent opinion of specific facilities.

21 (d) COMPLIANCE MECHANISMS.—

22 (1) AGREEMENTS.—

23 (A) NEW AGREEMENTS.—Compliance with
24 applicable standards of the Secretary and all
25 applicable regulations, and meaningful financial

1 penalties for failure to comply, shall be a mate-
2 rial term in any new contract, memorandum of
3 agreement, or any renegotiation, modification,
4 or renewal of an existing contract or agreement,
5 including fee negotiations, executed with deten-
6 tion facilities.

7 (B) EXISTING AGREEMENTS.—Not later
8 than 180 days after the date of the enactment
9 of this Act, the Secretary shall secure a modi-
10 fication incorporating these terms for any exist-
11 ing contracts or agreements that will not be re-
12 negotiated, renewed, or otherwise modified.

13 (C) CANCELLATION OF AGREEMENTS.—
14 Unless the Secretary provides a reasonable ex-
15 tension to a specific detention facility that is
16 negotiating in good faith, contracts or agree-
17 ments with detention facilities that are not
18 modified within 1 year of the date of the enact-
19 ment of this Act will be cancelled.

20 (D) PROVISION OF INFORMATION.—In
21 making modifications under this paragraph, the
22 Secretary shall require that detention facilities
23 provide to the Secretary all contracts, memo-
24 randa of agreement, evaluations, and reviews
25 regarding the facility on a regular basis. The

1 Secretary shall make these materials publicly
2 available.

3 (2) FINANCIAL PENALTIES.—

4 (A) REQUIREMENT TO IMPOSE.—Subject
5 to subparagraph (C), the Secretary shall impose
6 meaningful financial penalties upon facilities
7 that fail to comply with applicable detention
8 standards issued by the Secretary and other ap-
9 plicable regulations.

10 (B) TIMING OF IMPOSITION.—Financial
11 penalties imposed under subparagraph (A) shall
12 be imposed immediately after a facility fails to
13 achieve an adequate or the equivalent median
14 score in any performance evaluation.

15 (C) WAIVER.—The requirements of sub-
16 paragraph (A) may be waived if the facility cor-
17 rects the noted deficiencies and receives an ade-
18 quate score in not more than 90 days.

19 (D) MULTIPLE OFFENDERS.—In cases of
20 persistent and substantial non-compliance, in-
21 cluding scoring less than adequate or the equiv-
22 alent median score in 2 consecutive inspections,
23 the Secretary shall terminate contracts or
24 agreements with such facilities within 60 days,
25 or in the case of facilities operated by the Sec-

1 retary, such facilities shall be closed within 90
2 days.

3 (e) REPORTING REQUIREMENTS.—

4 (1) OBJECTIVES.—Not later than June 30 of
5 each year, the Secretary shall prepare and submit to
6 the Committee on the Judiciary of the Senate and
7 the Committee on the Judiciary of the House of
8 Representatives a report on inspection and oversight
9 activities of detention facilities.

10 (2) CONTENTS.—Each report submitted under
11 paragraph (1) shall include—

12 (A) a description of each detention facility
13 found to be in noncompliance with applicable
14 detention standards issued by the Department
15 and other applicable regulations;

16 (B) a description of the actions taken by
17 the Department to remedy any findings of non-
18 compliance or other identified problems, includ-
19 ing financial penalties, contract or agreement
20 termination, or facility closure; and

21 (C) information regarding whether the ac-
22 tions described in subparagraph (B) resulted in
23 compliance with applicable detention standards
24 and regulations.

1 **SEC. 3717. PROCEDURES FOR BOND HEARINGS AND FILING**
2 **OF NOTICES TO APPEAR.**

3 (a) ALIENS IN CUSTODY.—Section 236 (8 U.S.C.
4 1226) is amended by adding at the end the following:

5 “(f) PROCEDURES FOR CUSTODY HEARINGS.—For
6 any alien taken into custody under any provision of this
7 Act, with the exception of minors being transferred to or
8 in the custody of the Office of Refugee Resettlement, the
9 following shall apply:

10 “(1) The Secretary of Homeland Security shall,
11 without unnecessary delay and not later than 72
12 hours after the alien is taken into custody, file the
13 Notice to Appear or other relevant charging docu-
14 ment with the immigration court having jurisdiction
15 over the location where the alien was apprehended,
16 and serve such notice on the alien.

17 “(2) The Secretary shall immediately determine
18 whether the alien shall remain in custody or be re-
19 leased and, without unnecessary delay and not later
20 than 72 hours after the alien was taken into cus-
21 tody, serve upon the alien the custody decision speci-
22 fying the reasons for continued custody and the
23 amount of bond if any.

24 “(3) The Attorney General shall ensure the
25 alien has the opportunity to appear before an immi-
26 gration judge for a custody determination hearing

1 promptly after service of the Secretary's custody de-
2 cision. The immigration judge may, on the Sec-
3 retary's motion and upon a showing of good cause,
4 postpone a custody redetermination hearing for no
5 more than 72 hours after service of the custody deci-
6 sion, except that in no case shall the hearing occur
7 more than 6 days (including weekends and holidays)
8 after the alien was taken into custody.

9 “(4) The immigration judge shall advise the
10 alien of the right to postpone the custody determina-
11 tion hearing and shall, on the oral or written request
12 of the individual, postpone the custody determina-
13 tion hearing for a period of no more than 14 days.

14 “(5) Except for aliens that the immigration
15 judge has determined are deportable under section
16 236(c) or certified under section 236A, the immigra-
17 tion judge shall review the custody determination de
18 novo and may continue to detain the alien only if the
19 Secretary demonstrates that no conditions, including
20 the use of alternatives to detention that maintain
21 custody over the alien, will reasonably assure the ap-
22 pearance of the alien as required and the safety of
23 any other person and the community. For aliens who
24 the immigration judge has determined are deport-
25 able under section 236(c), the immigration judge

1 may review the custody determination if the Sec-
2 retary agrees the alien is not a danger to the com-
3 munity and alternatives to detention exist that as-
4 sure the appearance of the alien as required and the
5 safety of any other person and the community.

6 “(6) In the case of any alien remaining in cus-
7 tody after a custody determination, the Attorney
8 General shall provide de novo custody determination
9 hearings before an immigration judge every 90 days
10 so long as the alien remains in custody. An alien
11 may also obtain a de novo custody redetermination
12 hearing at any time upon a showing of good cause.

13 “(7) The Secretary shall inform the alien of his
14 or her rights under this paragraph at the time the
15 alien is first taken into custody.”.

16 (b) STIPULATED REMOVAL.—Section 240(d) (8
17 U.S.C. 1229a) is amended to read as follows:

18 “(d) STIPULATED REMOVAL.—The Attorney General
19 shall provide by regulation for the entry by an immigration
20 judge of an order of removal stipulated to by the alien
21 (or the alien’s representative) and the Service. An immi-
22 gration judge may enter a stipulated removal order only
23 upon a finding at an in-person hearing that the stipulation
24 is voluntary, knowing and intelligent. A stipulated order

1 shall constitute a conclusive determination of the alien's
2 removability from the United States.”.

3 **SEC. 3718. SANCTIONS FOR COUNTRIES THAT DELAY OR**
4 **PREVENT REPATRIATION OF THEIR NATION-**
5 **ALS.**

6 Section 243(d) (8 U.S.C. 1253(d)) is amended to
7 read as follows:

8 “(d) DISCONTINUING GRANTING VISAS TO NATION-
9 ALS OF COUNTRIES THAT DENY OR DELAY ACCEPTING
10 ALIENS.—Notwithstanding section 221(c), if the Sec-
11 retary of Homeland Security determines, in consultation
12 with the Secretary of State, that the government of a for-
13 eign country denies or unreasonably delays accepting
14 aliens who are citizens, subjects, nationals, or residents
15 of that country after the Secretary asks whether the gov-
16 ernment will accept an alien under this section, or after
17 a determination that the alien is inadmissible under para-
18 graph (6) or (7) of section 212(a), the Secretary of State
19 shall order consular officers in that foreign country to dis-
20 continue granting visas, or classes of visas until the Sec-
21 retary of Homeland Security notifies the Secretary of
22 State that the country has accepted the aliens.”.

1 SEC. 3719. GROSS VIOLATIONS OF HUMAN RIGHTS.

(a) INADMISSIBILITY OF CERTAIN ALIENS.—Section 212(a)(3)(E) (8 U.S.C. 1182(a)(3)(E)) is amended by striking clause (iii) and inserting the following:

“(iii) COMMISSION OF ACTS OF TORTURE, EXTRAJUDICIAL KILLINGS, WAR CRIMES, OR WIDESPREAD OR SYSTEMATIC ATTACKS ON CIVILIANS.—Any alien who planned, ordered, assisted, aided and abetted, committed, or otherwise participated, including through command responsibility, in the commission of—

13 “(I) any act of torture (as de-
14 fined in section 2340 of title 18,
15 United States Code);

16 “(II) any extrajudicial killing (as
17 defined in section 3(a) of the Torture
18 Victim Protection Act of 1991 (28
19 U.S.C. 1350 note)) under color of law
20 of any foreign nation;

21 “(III) a war crime (as defined in
22 section 2441 of title 18, United States
23 Code); or

24 “(IV) any of the following acts as
25 a part of a widespread or systematic
26 attack directed against a civilian pop-

1 ulation, with knowledge of the attack:
2 murder, extermination, enslavement,
3 forcible transfer of population, arbitrary
4 detention, rape, sexual slavery,
5 enforced prostitution, forced pregnancy,
6 enforced sterilization, or any
7 other form of sexual violence of comparable
8 gravity; persecution on political
9 racial, national, ethnic, cultural,
10 religious, or gender grounds; enforced
11 disappearance of persons; or other inhumane
12 acts of a similar character intentionally
13 causing great suffering or
14 serious bodily or mental injury,
15 is inadmissible.

16 “(iv) LIMITATION.—Clause (iii) shall
17 not apply to an alien if the Secretary of
18 Homeland Security or the Attorney General
19 determine that the actions giving rise
20 to the alien’s inadmissibility under such
21 clause were committed under duress. In
22 determining whether the alien was subject
23 to duress, the Secretary may consider,
24 among relevant factors, the age of the

1 alien at the time such actions were com-
2 mitted.”.

3 (b) NONAPPLICABILITY OF CONFIDENTIALITY RE-
4 QUIREMENT WITH RESPECT TO VISA RECORDS.—The
5 President may make public, without regard to the require-
6 ments under section 222(f) of the Immigration and Na-
7 tionality Act (8 U.S.C. 1202(f)), with respect to confiden-
8 tiality of records pertaining to the issuance or refusal of
9 visas or permits to enter the United States, the names
10 of aliens deemed inadmissible on the basis of section
11 212(a)(3)(E)(iii) of such Act, as amended by subsection
12 (a).

13 **TITLE IV—REFORMS TO NON-**
14 **IMMIGRANT VISA PROGRAMS**
15 **Subtitle A—Employment-based**
16 **Nonimmigrant Visas**

17 **SEC. 4101. MARKET-BASED H-1B VISA LIMITS.**

18 (a) IN GENERAL.—Section 214(g) (8 U.S.C.
19 1184(g)) is amended—

20 (1) in paragraph (1)—

21 (A) in the matter preceding subparagraph
22 (A), by striking “(beginning with fiscal year
23 1992)”; and

24 (B) by amending subparagraph (A) to read
25 as follows:

1 “(A) under section 101(a)(15)(H)(i)(b)
2 may not exceed—

3 “(i) 110,000 for the first fiscal year
4 beginning after the date of the enactment
5 of the Border Security, Economic Oppor-
6 tunity, and Immigration Modernization
7 Act; and

8 “(ii) the number calculated under
9 paragraph (9) for the succeeding fiscal
10 year; or”;

11 (2) by redesignating paragraph (10) as sub-
12 paragraph (D) of paragraph (9);

13 (3) by redesignating paragraph (9) as para-
14 graph (10); and

15 (4) by inserting after paragraph (8) the fol-
16 lowing:

17 “(9)(A) Except as provided in subparagraphs (B)
18 and (C), the allocation of nonimmigrant visas under sec-
19 tion 101(a)(15)(H)(i)(b) for each fiscal year after the first
20 fiscal year beginning after the date of the enactment of
21 the Border Security, Economic Opportunity, and Immi-
22 gration Modernization Act shall be equal to the sum of—

23 “(i) the allocation of such visas for the most re-
24 cently completed fiscal year; and

25 “(ii) the product of—

1 “(I) the allocation of such visas for the
2 most recently completed fiscal year; multiplied
3 by

4 “(II) the High Skilled Jobs Demand Index
5 for such fiscal year calculated under subpara-
6 graph (C).

7 “(B)(i) The number of visas calculated under sub-
8 paragraph (A) for any fiscal year shall not be less than
9 110,000 or more than 180,000.

10 “(ii) The number of visas calculated under subpara-
11 graph (A) for any fiscal year may not be more than 10,000
12 more than, or less than 10,000 less than, the allocation
13 of such visas for the previous fiscal year.

14 “(C) The High Skilled Jobs Demand Index calculated
15 under this subparagraph for a fiscal year is the percentage
16 equal to the sum of—

17 “(i) $\frac{1}{2}$ of a fraction—

18 “(I) the numerator of which is the number
19 of nonimmigrant visas under section
20 101(a)(15)(H)(i)(b) petitioned for during the
21 previous fiscal year minus the numerical limita-
22 tion of such visas determined under paragraph
23 (1) for the previous fiscal year; and

24 “(II) the denominator of which is the nu-
25 merical limitation of such visas determined

1 under paragraph (1) for the previous fiscal
2 year; and

3 “(ii) $\frac{1}{2}$ of a fraction—

4 “(I) the numerator of which is the average
5 number of specified unemployed persons for the
6 previous fiscal year minus the average number
7 of specified unemployed persons for such fiscal
8 year; and

9 “(II) the denominator of which is the aver-
10 age number of specified unemployed persons for
11 such fiscal year.

12 “(D) If the actual number of visas under section
13 101(a)(15)(H)(i)(b) applied for during a previous fiscal
14 year is not available at the time the Secretary determines
15 the numerical limitation under subparagraph (C) for the
16 following fiscal year, the Secretary may estimate such
17 number based on a statistical extrapolation of the number
18 of applications for such visas received at the time such
19 estimate is made.

20 “(E) For purposes of subparagraph (C), the term
21 ‘specified unemployed persons’ means, with respect to any
22 fiscal year, the number of unemployed persons in the
23 ‘management, professional, and related occupations’ cat-
24 egory of the employment report released by the Bureau
25 of Labor Statistics.”.

1 (b) INCREASE IN ALLOCATION FOR STEM NON-
2 IMMIGRANTS.—Section 214(g)(5)(C) (8 U.S.C.
3 1184(g)(5)(C)) is amended to read as follows:

4 “(C) has earned a master’s or higher degree, in
5 a field of science, technology, engineering, or math
6 included in the Department of Education’s Classi-
7 fication of Instructional Programs taxonomy within
8 the summary groups of computer and information
9 sciences and support services, engineering, mathe-
10 matics and statistics, biological and biomedical
11 sciences, and physical sciences, from a United States
12 institution of higher education (as defined in section
13 101(a) of the Higher Education Act of 1965 (20
14 U.S.C. 1001(a)) until the number of aliens who are
15 exempted from such numerical limitation during
16 such year exceed 25,000.”.

17 (c) PUBLICATION.—

18 (1) DATA SUMMARIZING PETITIONS.—The Sec-
19 retary shall timely upload to a public website data
20 that summarizes the adjudication of nonimmigrant
21 petitions under section 101(a)(15)(H)(i)(b) of the
22 Immigration and Nationality Act (8 U.S.C.
23 1101(a)(15)(H)(i)(b)) during each fiscal year.

24 (2) ANNUAL NUMERICAL LIMITATION.—As soon
25 as practicable and no later than March 2 of each fis-

1 cal year, the Secretary shall publish in the Federal
2 Register the numerical limitation determined under
3 section 214(g)(1)(A) for such fiscal year.

4 (d) EFFECTIVE DATE AND APPLICATION.—The
5 amendments made by subsection (a) shall take effect on
6 the first day of the first fiscal year beginning after the
7 date of the enactment of this Act and apply to applications
8 for nonimmigrant visas under section 101(a)(15)(H)(i)(b)
9 of the Immigration and Nationality Act (8 U.S.C.
10 1101(a)(15)(H)(i)(b)) for such fiscal year.

11 **SEC. 4102. EMPLOYMENT AUTHORIZATION FOR DEPEND-**
12 **ENTS OF EMPLOYMENT-BASED NON-**
13 **IMMIGRANTS.**

14 Section 214(c) (8 U.S.C. 1184(c)) is amended—

15 (1) by striking “Attorney General” each place
16 such term appears and inserting “Secretary of
17 Homeland Security”; and

18 (2) in paragraph (2), by amending subpara-
19 graph (E) to read as follows:

20 “(E)(i) In the case of an alien spouse admitted under
21 section 101(a)(15)(L), who is accompanying or following
22 to join a principal alien admitted under such section, the
23 Secretary of Homeland Security shall—

24 “(I) authorize the alien spouse to engage in em-
25 ployment in the United States; and

1 “(II) provide the spouse with an ‘employment
2 authorized’ endorsement or other appropriate work
3 permit.

4 “(ii) In the case of an alien spouse admitted under
5 section 101(a)(15)(H)(i)(b), who is accompanying or fol-
6 lowing to join a principal alien admitted under such sec-
7 tion, the Secretary of Homeland Security shall—

8 “(I) authorize the alien spouse to engage in em-
9 ployment in the United States only if such spouse is
10 a national of a foreign country that permits recip-
11 rocal employment; and

12 “(II) provide such a spouse with an ‘employ-
13 ment authorized’ endorsement or other appropriate
14 work permit, if appropriate.

15 “(iii)(I) In clause (ii), the term ‘foreign country that
16 permits reciprocal employment’ means a foreign country
17 that permits a spouse who is a national of the United
18 States and is accompanying or following to join the em-
19 ployment-based nonimmigrant husband or wife of such
20 spouse to be employed in such foreign country based on
21 that status.

22 “(II) In subclause (I), the term ‘employment-based
23 nonimmigrant’ means an individual who is admitted to a
24 foreign country to perform employment similar to the em-
25 ployment described in section 101(a)(15)(H)(i)(b).”.

1 **SEC. 4103. ELIMINATING IMPEDIMENTS TO WORKER MO-**
2 **BILITY.**

3 (a) DEFERENCE TO PRIOR APPROVALS.—Section
4 214(c) (8 U.S.C. 1184(c)), as amended by section 4102,
5 is further amended by adding at the end the following:

6 “(15) Subject to paragraph (2)(D) and subsection (g)
7 and section 104(c) and subsections (a) and (b) of section
8 106 of the American Competitiveness in the Twenty-first
9 Century Act of 2000 (Public Law 106–313; 8 U.S.C. 1184
10 note), the Secretary of Homeland Security shall give def-
11 erence to a prior approval of a petition in reviewing a peti-
12 tion to extend the status of a nonimmigrant admitted
13 under subparagraph (H)(i)(b) or (L) of section 101(a)(15)
14 if the petition involves the same alien and petitioner unless
15 the Secretary determines that—

16 “(A) there was a material error with regard to
17 the previous petition approval;

18 “(B) a substantial change in circumstances has
19 taken place;

20 “(C) new material information has been discov-
21 ered that adversely impacts the eligibility of the em-
22 ployer or the nonimmigrant; or

23 “(D) in the Secretary’s discretion, such exten-
24 sion should not be approved.”.

1 (b) EFFECT OF EMPLOYMENT TERMINATION.—Sec-
2 tion 214(n) (8 U.S.C. 1184(n)) is amended by adding at
3 the end the following:

4 “(3) A nonimmigrant admitted under section
5 101(a)(15)(H)(i)(b) whose employment relationship termi-
6 nates before the expiration of the nonimmigrant’s period
7 of authorized admission shall be deemed to have retained
8 such legal status throughout the entire 60-day period be-
9 ginning on the date such employment is terminated. A
10 nonimmigrant who files a petition to extend, change, or
11 adjust their status at any point during such period shall
12 be deemed to have lawful status under section
13 101(a)(15)(H)(i)(b) while that petition is pending.”.

14 (c) VISA REVALIDATION.—Section 222(c) (8 U.S.C.
15 1202(c)) is amended—

16 (1) by inserting “(1)” before “Every alien”;
17 and

18 (2) by adding at the end the following:

19 “(2) The Secretary of State may, at the Secretary’s
20 discretion, renew in the United States the visa of an alien
21 admitted under subparagraph (A), (E), (G), (H), (I), (L),
22 (N), (O), (P), (R), or (W) of section 101(a)(15) if the
23 alien has remained eligible for such status and qualifies
24 for a waiver of interview as provided for in subsection
25 (h)(1)(D).”.

1 (d) INTERVIEW WAIVERS FOR LOW RISK VISA AP-
2 PLICANTS.—Section 222(h)(1) (8 U.S.C. 1202(h)(1)) is
3 amended—

4 (1) in subparagraph (B)(iv), by striking “or” at
5 the end;

6 (2) in subparagraph (C)(ii), by striking “and”
7 at the end and inserting “or”; and

8 (3) by adding at the end the following:

9 “(D) by the Secretary of State, in con-
10 sultation with the Secretary of Homeland Secu-
11 rity, for such aliens or classes of aliens—

12 “(i) that the Secretary determines
13 generally represent a low security risk;

14 “(ii) for which an in-person interview
15 would not add material benefit to the adju-
16 dication process;

17 “(iii) unless the Secretary of State,
18 after a review of all standard database and
19 biometric checks, the visa application, and
20 other supporting documents, determines
21 that an interview is unlikely to reveal de-
22 rogatory information; and

23 “(iv) except that in every case, the
24 Secretary of State retains the right to re-

1 quire an applicant to appear for an inter-
2 view; and”.

3 **SEC. 4104. STEM EDUCATION AND TRAINING.**

4 (a) FEE.—Section 212(a)(5)(A) (8 U.S.C.
5 1182(a)(5)(A)) is amended by adding at the end the fol-
6 lowing:

7 “(v) FEE.—An employer shall submit,
8 along with an application for a certification
9 under this subparagraph, a fee of \$500
10 which shall be deposited in the STEM
11 Education and Training Account estab-
12 lished by section 286(s).”.

13 (b) USE OF FEE.—Section 286(s) (8 U.S.C. 1356(s))
14 is amended to read as follows:

15 “(s) STEM EDUCATION AND TRAINING ACCOUNT.—

16 “(1) IN GENERAL.—There is established in the
17 general fund of the Treasury a separate account,
18 which shall be known as the ‘STEM Education and
19 Training Account’. Notwithstanding any other sec-
20 tion of this title, there shall be deposited as offset-
21 ting receipts into the account all fees collected under
22 section 212(a)(5)(A)(v).

23 “(2) LOW-INCOME STEM SCHOLARSHIP PRO-
24 GRAM.—

1 “(A) IN GENERAL.—Fifty-two percent of
2 the amounts deposited into the STEM Edu-
3 cation and Training Account shall remain avail-
4 able to the Director of the National Science
5 Foundation until expended for scholarships de-
6 scribed in section 414(d) of the American Com-
7 petitiveness and Workforce Improvement Act of
8 1998 (42 U.S.C. 1869c) for low-income stu-
9 dents enrolled in a program of study leading to
10 a degree in science, technology, engineering, or
11 mathematics.

12 “(B) STEM EDUCATION FOR UNDERREP-
13 RESENTED.—The Director shall work in con-
14 sultation with, or direct scholarship funds
15 through, national non-profit organizations that
16 primarily focus on science, technology, engineer-
17 ing, or mathematics education for underrep-
18 resented groups such as women and minorities.

19 “(C) LOAN FORGIVENESS.—The Director
20 may expend funds from the Account for pur-
21 poses of loan forgiveness or repayment of stu-
22 dent loans which led to a low-income student
23 obtaining a degree in science, technology, engi-
24 neering, mathematics, or other high demand
25 fields.

1 “(3) NATIONAL SCIENCE FOUNDATION GRANT
2 PROGRAM FOR K–12 SCIENCE, TECHNOLOGY, ENGI-
3 NEERING AND MATHEMATICS EDUCATION.—

4 “(A) IN GENERAL.—Fifteen percent of the
5 amounts deposited into the STEM Education
6 and Training Account shall remain available to
7 the Director of the National Science Founda-
8 tion until expended to carry out a direct or
9 matching grant program to support improve-
10 ment in K–12 education, including through pri-
11 vate-public partnerships. Such grants shall in-
12 clude formula based grants that target lower in-
13 come populations with a focus on reaching
14 women and minorities.

15 “(B) TYPES OF PROGRAMS COVERED.—
16 The Director shall award grants to such pro-
17 grams, including those which support the devel-
18 opment and implementation of standards-based
19 instructional materials models and related stu-
20 dent assessments that enable K–12 students to
21 acquire an understanding of science, technology,
22 engineering, and mathematics, as well as to de-
23 velop critical thinking skills; provide systemic
24 improvement in training K–12 teachers and
25 education for students in science, technology,

1 engineering, and mathematics, including by
2 supporting efforts to promote gender-equality
3 among students receiving such instruction; sup-
4 port the professional development of K–12
5 science, technology, engineering and mathe-
6 matics teachers in the use of technology in the
7 classroom; stimulate system-wide K–12 reform
8 of science, technology, engineering, and mathe-
9 matics in urban, rural, and economically dis-
10 advantaged regions of the United States; pro-
11 vide externships and other opportunities for
12 students to increase their appreciation and un-
13 derstanding of science, technology, engineering,
14 and mathematics (including summer institutes
15 sponsored by an institution of higher education
16 for students in grades 7–12 that provide in-
17 struction in such fields); involve partnerships of
18 industry, educational institutions, and national
19 or regional community based organizations with
20 demonstrated experience addressing the edu-
21 cational needs of disadvantaged communities;
22 provide college preparatory support to expose
23 and prepare students for careers in science,
24 technology, engineering, and mathematics; and
25 provide for carrying out systemic reform activi-

1 ties under section 3(a)(1) of the National
2 Science Foundation Act of 1950 (42 U.S.C.
3 1862(a)(1)).

4 “(4) STEM CAPACITY BUILDING AT MINORITY-
5 SERVING INSTITUTIONS.—

6 “(A) IN GENERAL.—Twenty percent of the
7 amounts deposited into the STEM Education
8 and Training Account shall remain available to
9 the Director of the National Science Founda-
10 tion until expended to establish or expand pro-
11 grams to award grants to institutions as de-
12 scribed in subparagraph (C) to enhance the
13 quality of undergraduate science, technology,
14 engineering, and mathematics education at in-
15 stitutions as described in subparagraph (C) and
16 to increase the retention and graduation rates
17 of students pursuing degrees in such fields at
18 such institutions.

19 “(B) TYPES OF PROGRAMS COVERED.—
20 Grants awarded under this paragraph shall be
21 awarded to—

22 “(i) minority-serving institutions of
23 higher education for—

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1 “(I) activities to improve courses
2 and curriculum in science, technology,
3 engineering, and mathematics;

4 “(II) efforts to promote gender
5 equality among students enrolled in
6 such courses;

7 “(III) faculty development;

8 “(IV) stipends for undergraduate
9 students participating in research;
10 and

11 “(V) other activities consistent
12 with subparagraph (A), as determined
13 by the Director; and

14 “(ii) to other institutions of higher
15 education to partner with the institutions
16 described in clause (i) for—

17 “(I) faculty and student develop-
18 ment and exchange;

19 “(II) research infrastructure de-
20 velopment;

21 “(III) joint research projects;
22 and

23 “(IV) identification and develop-
24 ment of minority and low-income can-
25 didates for graduate studies in

1 science, technology, engineering and
2 mathematics degree programs.

3 “(C) INSTITUTIONS INCLUDED.—In this
4 paragraph, the term ‘institutions’ shall in-
5 clude—

6 “(i) colleges eligible to receive funds
7 under the Act of August 30, 1890 (7
8 U.S.C. 321–326a and 328), including
9 Tuskegee University;

10 “(ii) 1994 Institutions, as defined in
11 section 532 of the Equity in Educational
12 Land-Grant Status Act of 1994 (7 U.S.C.
13 301 note); and

14 “(iii) Hispanic-serving institutions, as
15 defined in section 502(a)(5) of the Higher
16 Education Act of 1965 (20 U.S.C.
17 1101a(a)(5)).

18 “(D) GRANTING OF BONDING AUTHOR-
19 ITY.—A recipient of a grant awarded under this
20 subsection is authorized to utilize such funds
21 for the issuance of bonds to fund research in-
22 frastructure development

23 “(5) STEM JOB TRAINING.—Ten percent of
24 amounts deposited into the STEM Education and

1 Training Account shall remain available to the Sec-
2 retary of Labor until expended for—

3 “(A) demonstration programs and projects
4 described in section 414(c) of the American
5 Competitiveness and Workforce Improvement
6 Act of 1998 (29 U.S.C. 2916a(c)); and

7 “(B) training programs in the fields of
8 science, technology, engineering, and mathe-
9 matics for persons who have served honorably
10 in the Armed Forces of the United States and
11 have retired or are retiring from such service.

12 “(6) USE OF FEES FOR DUTIES RELATING TO
13 PETITIONS.—One and one-half percent of the
14 amounts deposited into the STEM Education and
15 Training Account shall remain available to the Sec-
16 retary of Homeland Security until expended to carry
17 out duties under paragraphs (1) (E) or (F) of sec-
18 tion 204(a) (related to petitions for immigrants de-
19 scribed in section 203(b)) and under paragraphs (1)
20 and (9) of section 214(c) (related to petitions made
21 for nonimmigrants described in section
22 101(a)(15)(H)(i)(b)).

23 “(7) USE OF FEES FOR APPLICATION PROC-
24 ESSING AND ENFORCEMENT.—One and one-half per-
25 cent of the amounts deposited into the STEM Edu-

1 cation and Training Account shall remain available
2 to the Secretary of Labor until expended for de-
3 creasing the processing time for applications under
4 section 212(a)(5)(A) and section 212(n)(1).”.

5 **SEC. 4105. H-1B AND L VISA FEES.**

6 Section 281 (8 U.S.C. 1351) is amended—

7 (1) by striking “The fees” and inserting the fol-
8 lowing:

9 “(a) IN GENERAL.—The fees”;

10 (2) by striking “: Provided, That nonimmigrant
11 visas” and inserting the following: ”.

12 “(b) UNITED NATIONS VISITORS.—Nonimmigrant
13 visas”;

14 (3) by striking “Subject to” and inserting the
15 following:

16 “(c) FEE WAIVERS OR REDUCTIONS.—Subject to”;
17 and

18 (4) by adding at the end the following:

19 “(d) H-1B AND L VISA FEES.—In addition to the
20 fees authorized under subsection (a), the Secretary of
21 Homeland Security shall collect, from each employer (ex-
22 cept for nonprofit research institutions and nonprofit edu-
23 cational institutions) filing a petition to hire non-
24 immigrants described in subparagraph (H)(i)(B) or (L)
25 of section 101(a)(15), a fee in an amount equal to—

1 “(1) \$1,250 for each such petition filed by any
2 employer with not more than 25 full-time equivalent
3 employees in the United States; and

4 “(2) \$2,500 for each such petition filed by any
5 employer with more than 25 such employees.”.

6 **Subtitle B—H-1B Visa Fraud and**
7 **Abuse Protections**

8 **CHAPTER 1—H-1B EMPLOYER**

9 **APPLICATION REQUIREMENTS**

10 **SEC. 4211. MODIFICATION OF APPLICATION REQUIRE-**
11 **MENTS.**

12 (a) GENERAL APPLICATION REQUIREMENTS.—

13 (1) WAGE RATES.—

14 (A) IN GENERAL.—Section 212(n)(1)(A)

15 (8 U.S.C. 1182(n)(1)(A)) is amended—

16 (i) clause (i)—

17 (I) in the matter preceding sub-
18 clause (I), by inserting “if the em-
19 ployer is not an H-1B-dependent em-
20 ployer,” before “is offering”;

21 (II) in subclause (I), by striking
22 “question, or” and inserting “ques-
23 tion; or”;

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1 (III) in subclause (II), by strik-
2 ing “employment,” and inserting “em-
3 ployment;” and

4 (IV) in the undesignated material
5 following subclause (II), by striking
6 “application, and” and inserting “ap-
7 plication;”; and

8 (ii) by striking clause (ii) and insert-
9 ing the following:

10 “(ii) if the employer is an H-1B-dependent
11 employer, is offering and will offer to H-1B
12 nonimmigrants, during the period of authorized
13 employment for each H-1B nonimmigrant,
14 wages that are not less than the level 2 wages
15 set out in subsection (p); and

16 “(iii) will provide working conditions for
17 H-1B nonimmigrants that will not adversely af-
18 fect the working conditions of other workers
19 similarly employed.”.

20 (2) STRENGTHENING THE PREVAILING WAGE
21 SYSTEM.—

22 (A) IN GENERAL.—Section 212(p) (8
23 U.S.C. 1182(p)) is amended to read as follows:

24 “(p) COMPUTATION OF PREVAILING WAGE LEVEL.—

25 “(1) IN GENERAL.—

1 “(A) SURVEYS.—For employers of non-
2 immigrants admitted pursuant to section
3 101(a)(15)(H)(i)(b), the Secretary of Labor
4 shall make available to employers a govern-
5 mental survey to determine the prevailing wage
6 for each occupational classification by metro-
7 politan statistical area in the United States.
8 Such survey, or other survey approved by the
9 Secretary of Labor, shall provide 3 levels of
10 wages commensurate with experience, edu-
11 cation, and level of supervision. Such wage lev-
12 els shall be determined as follows:

13 “(i) The first level shall be the mean
14 of the lowest two-thirds of wages surveyed,
15 but in no case less than 80 percent of the
16 mean of the wages surveyed.

17 “(ii) The second level shall be the
18 mean of wages surveyed.

19 “(iii) The third level shall be the
20 mean of the highest two-thirds of wages
21 surveyed.

22 “(B) EDUCATIONAL, NONPROFIT, RE-
23 SEARCH, AND GOVERNMENTAL ENTITIES.—In
24 computing the prevailing wage level for an occu-
25 pational classification in an area of employment

1 for purposes of section 203(b)(1)(D) and sub-
2 sections (a)(5)(A), (n)(1)(A)(i)(II), and
3 (t)(1)(A)(i)(II) of this section in the case of an
4 employee of—

5 “(i) an institution of higher education,
6 or a related or affiliated nonprofit entity;
7 or

8 “(ii) a nonprofit research organization
9 or a governmental research organization;
10 the prevailing wage level shall only take into ac-
11 count employees at such institutions and orga-
12 nizations in the area of employment.

13 “(2) PAYMENT OF PREVAILING WAGE.—The
14 prevailing wage level required to be paid pursuant to
15 section 203(b)(1)(D) and subsections (a)(5)(A),
16 (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section
17 shall be 100 percent of the wage level determined
18 pursuant to those sections.

19 “(3) PROFESSIONAL ATHLETE.—With respect
20 to a professional athlete (as defined in subsection
21 (a)(5)(A)(iii)(II)) when the job opportunity is cov-
22 ered by professional sports league rules or regula-
23 tions, the wage set forth in those rules or regula-
24 tions shall be considered as not adversely affecting

1 the wages of United States workers similarly em-
2 ployed and be considered the prevailing wage.

3 “(4) WAGES FOR H-2B EMPLOYEES.—

4 “(A) IN GENERAL.—The wages paid to H-
5 2B nonimmigrants employed by the employer
6 will be the greater of—

7 “(i) the actual wage level paid by the
8 employer to other employees with similar
9 experience and qualifications for such posi-
10 tion; or

11 “(ii) the prevailing wage level for the
12 occupational classification of the position
13 in the geographic area of the employment,
14 based on the best information available as
15 of the time of filing the application.

16 “(B) BEST INFORMATION AVAILABLE.—In
17 subparagraph (A), the term ‘best information
18 available’, with respect to determining the pre-
19 vailing wage for a position, means—

20 “(i) a controlling collective bargaining
21 agreement or Federal contract wage, if ap-
22 plicable;

23 “(ii) if there is no applicable wage
24 under clause (i), the wage level commensu-
25 rate with the experience, training, and su-

1 pervision required for the job based on Bu-
2 reau of Labor Statistics data; or
3 “(iii) if the data referred to in clause
4 (ii) is not available, a legitimate and recent
5 private survey of the wages paid for such
6 positions in the metropolitan statistical
7 area.”.

8 (3) WAGES FOR EDUCATIONAL, NONPROFIT,
9 RESEARCH, AND GOVERNMENTAL ENTITIES.—Sec-
10 tion 212 (8 U.S.C. 1182), as amended by sections
11 2312 and 2313, is further amended by adding at the
12 end the following:

13 “(x) DETERMINATION OF PREVAILING WAGE.—In
14 the case of a nonprofit institution of higher education (as
15 defined in section 101(a) of the Higher Education Act of
16 1965 (20 U.S.C. 1001(a))), a related or affiliated non-
17 profit entity, a nonprofit research organization, or a Gov-
18 ernmental research organization, the Secretary of Labor
19 shall determine such wage levels as follows:

20 “(1) If the Secretary of Labor uses, or makes
21 available to employers, a governmental survey to de-
22 termine the prevailing wage, such survey shall pro-
23 vide at least 4 levels of wages commensurate with
24 experience, education, and the level of supervision.

1 “(2) If an existing government survey has only
2 2 levels, 2 intermediate levels may be created by di-
3 viding by 3, the difference between the 2 levels of-
4 fered, adding the quotient thus obtained to the first
5 level and subtracting that quotient from the second
6 level .

7 “(3) For institutions of higher education, only
8 teaching positions and research positions may be
9 paid using this special educational wage level.

10 “(4) In computing the prevailing wage level for
11 an occupational classification in an area of employ-
12 ment for purposes of subsections (a)(5)(A),
13 (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) and section
14 203(b)(1)(D) for an employee of an institution of
15 higher education, or a related or affiliated nonprofit
16 entity or a nonprofit research organization or a gov-
17 ernmental research organization, the prevailing wage
18 level shall only take into account employees at such
19 institutions and organizations in the area of employ-
20 ment.”.

21 (b) INTERNET POSTING REQUIREMENT.—Section
22 212(n)(1)(C) (8 U.S.C. 1182(n)(1)(C)) is amended—

23 (1) by redesignating clause (ii) as subclause
24 (II);

1 (2) by striking “(i) has provided” and inserting
2 the following:

3 “(ii)(I) has provided”; and

4 (3) by striking “sought, or” and inserting
5 “sought; or”;

6 (4) by inserting before clause (ii), as redesignated by paragraph (2), the following:

8 “(i) has advertised on the Internet website
9 maintained by the Secretary of Labor for the
10 purpose of such advertising, for at least 30 calendar days, a detailed description of each position for which a nonimmigrant is sought that includes a description of—

14 “(I) the wage ranges and other terms
15 and conditions of employment;

16 “(II) the minimum education, training, experience, and other requirements for
17 the position; and
18 the position; and

19 “(III) the process for applying for the
20 position; and”.

21 (c) APPLICATION OF REQUIREMENTS TO ALL EMPLOYERS.—
22 PLOYERS.—

23 (1) NONDISPLACEMENT.—Section 212(n)(1)(E)
24 (8 U.S.C. 1182(n)(1)(E)) is amended to read as follows:
25 lows:

1 “(E)(i)(I) Subject to subclause (II), in the case
2 of an application filed by an employer that is not an
3 H-1B-dependent employer, the employer did not dis-
4 place and will not displace a United States worker
5 (as defined in paragraph (4)) employed by the em-
6 ployer within the period beginning 90 days before
7 and ending 90 days after the date of filing of any
8 visa petition supported by the application.

9 “(II) An employer who is not an H-1B-depend-
10 ent employer shall not be subject to clause (i) if the
11 number of United States workers employed by such
12 employer in the same job zone as the H-1B non-
13 immigrant has not decreased during the 1-year pe-
14 riod ending on the date of the labor condition appli-
15 cation filed by the employer.

16 “(ii)(I) In the case of an application filed by an
17 H-1B-dependent employer, the employer did not dis-
18 place and will not displace a United States worker
19 (as defined in paragraph (4)) employed by the em-
20 ployer within the period beginning 180 days before
21 and ending 180 days after the date of the filing of
22 any visa petition supported by the application.

23 “(II) An application described in this clause is
24 an application filed on or after the date final regula-
25 tions are first promulgated to carry out this sub-

1 paragraph, and before by an H-1B-dependent em-
2 ployer (as defined in paragraph (3)) or by an em-
3 ployer that has been found, on or after the date of
4 the enactment of the American Competitiveness and
5 Workforce Improvement Act of 1998, under para-
6 graph (2)(C) or (5) to have committed a willful fail-
7 ure or misrepresentation during the 5-year period
8 preceding the filing of the application.

9 “(iii) In this subparagraph, the term ‘job zone’
10 means a zone assigned to an occupation by—

11 “(I) the Occupational Information Network
12 Database (O*NET) on the date of the enact-
13 ment of this Act; or

14 “(II) such Database or a similar successor
15 database, as designated by the Secretary of
16 Labor, after the date of the enactment of this
17 Act.”.

18 (2) RECRUITMENT.—Section 212(n)(1)(G) (8
19 U.S.C. 1182(n)(1)(G)) is amended to read as fol-
20 lows:

21 “(G) An employer, prior to filing the applica-
22 tion—

23 “(i) has advertised the job on an Internet
24 website maintained by the Secretary of Labor
25 for the purpose of such advertising;

1 “(ii) has offered the job to any United
2 States worker who applies and is equally or bet-
3 ter qualified for the job for which the non-
4 immigrant or nonimmigrants is or are sought;
5 and

6 “(iii) if the employer is an H-1B-depend-
7 ent employer, has taken good faith steps to re-
8 cruit, in the United States using procedures
9 that meet industry-wide standards and offering
10 compensation that is at least as great as that
11 required to be offered to H-1B nonimmigrants
12 under subparagraph (A), United States workers
13 for the job for which the nonimmigrant or non-
14 immigrants is or are sought.”.

15 (d) OUTPLACEMENT.—Section 212(n)(1)(F) (8
16 U.S.C. 1182(n)(1)(F)) is amended to read as follows:

17 “(F)(i) An H-1B-dependent employer may
18 not place, outsource, lease, or otherwise con-
19 tract for the services or placement of an H-1B
20 nonimmigrant employee.

21 “(ii) An employer that is not an H-1B-de-
22 pendent employer and not described in para-
23 graph (3)(A)(i) may not place, outsource, lease,
24 or otherwise contract for the services or place-
25 ment of an H-1B nonimmigrant employee un-

1 less the employer pays a fee of \$500 per
2 outplaced worker.

3 “(iii) A fee collected under clause (ii) shall
4 be deposited in the Comprehensive Immigration
5 Reform Trust Fund established under section 6
6 of the Border Security, Economic Opportunity,
7 and Immigration Modernization Act.”.

8 (e) H-1B-DEPENDENT EMPLOYER DEFINED.—Sec-
9 tion 212(n)(3) (8 U.S.C. 1182(n)(3)) is amended to read
10 as follows:

11 “(3)(A) For purposes of complying with the require-
12 ments related to outplacement of an employee, the term
13 ‘H-1B-dependent employer’ means an employer that—

14 “(i) is not a nonprofit institution of higher edu-
15 cation, a nonprofit research organization, or an em-
16 ployer whose primary line of business is healthcare
17 and who is petitioning for a physician, a nurse, or
18 physical therapist or a substantially equivalent
19 healthcare occupation; and

20 “(ii)(I) in the case of an employer that has 25
21 or fewer full-time equivalent employees who are em-
22 ployed in the United States, employs more than 7
23 H-1B nonimmigrants;

24 “(II) in the case of an employer that has at
25 least 26 but not more than 50 full-time equivalent

1 employees who are employed in the United States,
2 employs more than 12 H-1B nonimmigrant; or

3 “(III) in the case of an employer that has at
4 least 51 full-time equivalent employees who are em-
5 ployed in the United States, employs H-1B non-
6 immigrants in a number that is equal to at least 15
7 percent of the number of such full-time equivalent
8 employees.

9 “(B) In determining the number of employees who
10 are H-1B nonimmigrants under subparagraph (A)(ii), an
11 intending immigrant employee shall not count toward such
12 number”.

13 (f) INTENDING IMMIGRANTS DEFINED.—Section
14 101(a) (8 U.S.C. 1101(a)), as amended by section
15 3504(a), is further amended by adding at the end the fol-
16 lowing:

17 “(54)(A) The term ‘intending immigrant’
18 means, with respect to the number of aliens em-
19 ployed by an employer, an alien who intends to work
20 and reside permanently in the United States, as evi-
21 denced by—

22 “(i) a pending or approved application for
23 a labor certification filed for such alien by a
24 covered employer; or

1 “(ii) a pending or approved immigrant sta-
2 tus petition filed for such alien.

3 “(B) In this paragraph:

4 “(i) The term ‘covered employer’ means an
5 employer of an alien that, during the 1-year pe-
6 riod ending on the date the employer files an
7 application for the labor certification for such
8 alien, has filed an immigrant status petition for
9 not less than 90 percent of the aliens for whom
10 the employer filed an application for a labor
11 certification during such period. Labor certifi-
12 cation applications that have been pending for
13 longer than 1 year may be treated for this cal-
14 culation as if the employer filed an immigrant
15 status petition

16 “(ii) The term ‘labor certification’ means
17 an employment certification under section
18 212(a)(5)(A).

19 “(iii) The term ‘immigrant status petition’
20 means a petition filed under paragraph (1), (2),
21 or (3) of section 203(b).

22 “(C) Notwithstanding any other provision of
23 law—

24 “(i) for all calculations under this Act, of
25 the number of aliens admitted pursuant to sub-

1 paragraph (H)(i)(b) or (L) of paragraph (15),
2 an intending immigrant shall be counted as an
3 alien lawfully admitted for permanent residence
4 and shall not be counted as an employee admit-
5 ted pursuant to such a subparagraph; and

6 “(ii) for all determinations of the number
7 of employees or United States workers em-
8 ployed by an employer, all of the employees in
9 any group treated as a single employer under
10 subsection (b), (c), (m), or (o) of section 414 of
11 the Internal Revenue Code of 1986 shall be
12 counted.”.

13 **SEC. 4212. REQUIREMENTS FOR ADMISSION OF NON-**
14 **IMMIGRANT NURSES IN HEALTH PROFES-**
15 **SIONAL SHORTAGE AREAS.**

16 (a) EXTENSION OF PERIOD OF AUTHORIZED ADMIS-
17 SION.—Section 212(m)(3) (8 U.S.C. 1182(m)(3)) is
18 amended to read as follows:

19 “(3) The initial period of authorized admission as a
20 nonimmigrant under section 101(a)(15)(H)(i)(c) shall be
21 3 years, and may be extended once for an additional 3-
22 year period.”.

23 (b) NUMBER OF VISAS.—Section 212(m)(4) (8
24 U.S.C. 1182(m)(4)) is amended by striking “500.” and
25 inserting “300.”.

1 (c) PORTABILITY.—Section 214(n) (8 U.S.C.
2 1184(n)), as amended by section 4103(b), is further
3 amended by adding at the end the following:

4 “(4)(A) A nonimmigrant alien described in subpara-
5 graph (B) who was previously issued a visa or otherwise
6 provided nonimmigrant status under section
7 101(a)(15)(H)(i)(c) is authorized to accept new employ-
8 ment performing services as a registered nurse for a facil-
9 ity described in section 212(m)(6) upon the filing by the
10 prospective employer of a new petition on behalf of such
11 nonimmigrant as provided under subsection (c). Employ-
12 ment authorization shall continue for such alien until the
13 new petition is adjudicated. If the new petition is denied,
14 such authorization shall cease.

15 “(B) A nonimmigrant alien described in this para-
16 graph is a nonimmigrant alien—

17 “(i) who has been lawfully admitted into the
18 United States;

19 “(ii) on whose behalf an employer has filed a
20 nonfrivolous petition for new employment before the
21 date of expiration of the period of stay authorized by
22 the Secretary of Homeland Security, except that, if
23 a nonimmigrant described in section
24 101(a)(15)(H)(i)(c) is terminated or laid off by the
25 nonimmigrant’s employer, or otherwise ceases em-

1 ployment with the employer, such petition for new
2 employment shall be filed during the 60-day period
3 beginning on the date of such termination, lay off,
4 or cessation; and

5 “(iii) who, subsequent to such lawful admission,
6 has not been employed without authorization in the
7 United States before the filing of such petition.”.

8 (d) APPLICABILITY.—

9 (1) IN GENERAL.—Beginning on the commence-
10 ment date described in paragraph (2), the amend-
11 ments made by section 2 of the Nursing Relief for
12 Disadvantaged Areas Act of 1999 (Public Law 106–
13 95; 113 Stat. 1313), and the amendments made by
14 this section, shall apply to classification petitions
15 filed for nonimmigrant status. This period shall be
16 in addition to the period described in section 2(e) of
17 the Nursing Relief for Disadvantaged Areas Act of
18 1999 (8 U.S.C. 1182 note).

19 (2) COMMENCEMENT DATE.—Not later than 60
20 days after the date of the enactment of this Act, the
21 Secretary shall determine whether regulations are
22 necessary to implement the amendments made by
23 this section. If the Secretary determines that no
24 such regulations are necessary, the commencement
25 date described in this paragraph shall be the date of

1 such determination. If the Secretary determines that
2 regulations are necessary to implement any amend-
3 ment made by this section, the commencement date
4 described in this paragraph shall be the date on
5 which such regulations (in final form) take effect.

6 **SEC. 4213. NEW APPLICATION REQUIREMENTS.**

7 Section 212(n)(1) (8 U.S.C. 1182(n)(1)) is amended
8 by inserting after clause (iii) of subparagraph (G) , as
9 amended by section 4211(c)(2),the following:

10 “(H)(i) The employer has not advertised any
11 available position specified in the application in an
12 advertisement that states or indicates that—

13 “(I) such position is only available to an
14 individual who is or will be an H–1B non-
15 immigrant or an alien participating in optional
16 practical training pursuant to section
17 101(a)(15)(F)(i); or

18 “(II) an individual who is or will be an H–
19 1B nonimmigrant or participant in such op-
20 tional practical training shall receive priority or
21 a preference in the hiring process for such posi-
22 tion.

23 “(ii) The employer has not solely recruited indi-
24 viduals who are or who will be H–1B nonimmigrants

1 or participants in optional practical training pursu-
2 ant to section 101(a)(15)(F)(i) to fill such position.

3 “(I)(i) If the employer (other than an edu-
4 cational or research employer) employs 50 or more
5 employees in the United States, the sum of the num-
6 ber of such employees who are H–1B nonimmigrants
7 plus the number of such employees who are non-
8 immigrants described in section 101(a)(15)(L) may
9 not exceed—

10 “(I) 75 percent of the total number of em-
11 ployees, for fiscal year 2015;

12 “(II) 65 percent of the total number of
13 employees, for fiscal year 2016; and

14 “(III) 50 percent of the total number of
15 employees, for each fiscal year after fiscal year
16 2016.

17 “(ii) In this subparagraph:

18 “(I) The term ‘educational or research em-
19 ployer’ means an employer that is a nonprofit
20 institution of higher education or a nonprofit
21 research organization described in section
22 501(c)(3) of the Internal Revenue Code of 1986
23 and exempt from taxation under 501(a) of that
24 Code.

1 “(II) The term ‘H–1B nonimmigrant’
2 means an alien admitted as a nonimmigrant
3 pursuant to section 101(a)(15)(H)(i)(b).

4 “(III) The term ‘L nonimmigrant’ means
5 an alien admitted as a nonimmigrant pursuant
6 to section 101(a)(15)(L) to provide services to
7 his or her employer involving specialized knowl-
8 edge.

9 “(iii) In determining the percentage of employ-
10 ees of an employer that are H–1B nonimmigrants or
11 L nonimmigrants under clause (i), an intending im-
12 migrant employee shall not count toward such per-
13 centage.

14 “(J) The employer shall submit to the Sec-
15 retary of Homeland Security an annual report that
16 includes the Internal Revenue Service Form W–2
17 Wage and Tax Statement filed by the employer for
18 each H–1B nonimmigrant employed by the employer
19 during the previous year.”.

20 **SEC. 4214. APPLICATION REVIEW REQUIREMENTS.**

21 (a) TECHNICAL AMENDMENT.—Section 212(n)(1) (8
22 U.S.C. 1182(n)(1)), as amended by section 4213, is fur-
23 ther amended in the undesignated paragraph at the end,
24 by striking “The employer” and inserting the following:

25 “(K) The employer”.

1 (b) APPLICATION REVIEW REQUIREMENTS.—Sub-
2 paragraph (K) of such section 212(n)(1), as designated
3 by subsection (a), is amended—

4 (1) by inserting “and through the Department
5 of Labor’s website, without charge.” after “D.C.”;

6 (2) by striking “only for completeness” and in-
7 serting “for completeness and evidence of fraud or
8 misrepresentation of material fact,”;

9 (3) by striking “or obviously inaccurate” and
10 inserting “, presents evidence of fraud or misrepre-
11 sentation of material fact, or is obviously inac-
12 curate”;

13 (4) by striking “within 7 days of the” and in-
14 serting “not later than 14 after”; and

15 (5) by adding at the end the following: “If the
16 Secretary’s review of an application identifies evi-
17 dence of fraud or misrepresentation of material fact,
18 the Secretary may conduct an investigation and
19 hearing in accordance with paragraph (2).”.

20 (c) FILING OF PETITION FOR NONIMMIGRANT
21 WORKER.—Section 212(n)(1) (8 U.S.C. 1182(n)(1)), as
22 amended by section 4213, is further amended by adding
23 at the end the following:

24 “(L) An I-129 Petition for Nonimmigrant
25 Worker (or similar successor form)—

1 “(i) may be filed by an employer with the
2 Secretary of Homeland Security prior to the
3 date the employer receives an approved certifi-
4 cation described in section 101(a)(15)(H)(i)(b)
5 from the Secretary of Labor; and

6 “(ii) may not be approved by the Secretary
7 of Homeland Security until the date such cer-
8 tification is approved.”.

9 **CHAPTER 2— INVESTIGATION AND DIS-**
10 **POSITION OF COMPLAINTS AGAINST**
11 **H-1B EMPLOYERS**

12 **SEC. 4221. GENERAL MODIFICATION OF PROCEDURES FOR**
13 **INVESTIGATION AND DISPOSITION.**

14 Subparagraph (A) of section 212(n)(2) (8 U.S.C.
15 1182(n)(2)) is amended—

16 (1) by striking “(A) Subject” and inserting
17 “(A)(i) Subject”;

18 (2) by striking “12 months” and inserting “24
19 months”;

20 (3) by striking the last sentence; and

21 (4) by adding at the end the following:

22 “(ii)(I) Upon the receipt of such a com-
23 plaint, the Secretary may initiate an investiga-
24 tion to determine if such a failure or misrepresen-
25 tation has occurred.

1 “(II) The Secretary may conduct voluntary
2 surveys of the degree to which employers com-
3 ply with the requirements of this subsection.

4 “(III) The Secretary shall—

5 “(aa) conduct annual compliance au-
6 dits of each employer with more than 100
7 employees who work in the United States
8 if more than 15 percent of such employees
9 are H–1B nonimmigrants; and

10 “(bb) make available to the public an
11 executive summary or report describing the
12 general findings of the audits carried out
13 pursuant to this subclause.”.

14 **SEC. 4222. INVESTIGATION, WORKING CONDITIONS, AND**
15 **PENALTIES.**

16 Subparagraph (C) of section 212(n)(2) (8 U.S.C.
17 1182(n)(2)) is amended—

18 (1) in clause (i)—

19 (A) in the matter preceding subclause

20 (I)—

21 (i) by striking “a condition of para-
22 graph (1)(B), (1)(E), or (1)(F)” and in-
23 serting “a condition under subparagraph
24 (A), (B), (C)(i), (E), (F), (G), (H), (I), or
25 (J) of paragraph (1)”; and

1 (ii) by striking “(1)(C)” and inserting
2 “(1)(C)(ii)”;

3 (B) in subclause (I)—

4 (i) by striking “\$1,000” and inserting
5 “\$2,000”; and

6 (ii) by striking “and” at the end;

7 (C) in subclause (II), by striking the pe-
8 riod at the end and inserting a semicolon and
9 “and”; and

10 (D) by adding at the end the following:

11 “(III) an employer that violates such subpara-
12 graph (A) shall be liable to any employee harmed by
13 such violations for lost wages and benefits.”; and

14 (2) in clause (ii)—

15 (A) in subclause (I)—

16 (i) by striking “may” and inserting
17 “shall”; and

18 (ii) by striking “\$5,000” and insert-
19 ing “\$10,000”;

20 (B) in subclause (II), by striking the pe-
21 riod at the end and inserting a semicolon and
22 “and”; and

23 (C) by adding at the end the following:

1 “(III) an employer that violates such subpara-
2 graph (A) shall be liable to any employee harmed by
3 such violations for lost wages and benefits.”;

4 (3) in clause (iii)—

5 (A) in the matter preceding subclause (I),
6 by striking “90 days” both places it appears
7 and inserting “180 days”;

8 (B) in subclause (I)—

9 (i) by striking “may” and inserting
10 “shall”; and

11 (ii) by striking “and” at the end;

12 (C) in subclause (II), by striking the pe-
13 riod at the end and inserting a semicolon and
14 “and”; and

15 (D) by adding at the end the following:

16 “(III) an employer that violates subparagraph
17 (A) of such paragraph shall be liable to any em-
18 ployee harmed by such violations for lost wages and
19 benefits.”;

20 (4) in clause (iv)—

21 (A) by inserting “to take, or threaten to
22 take, a personnel action, or” before “to intimi-
23 date”;

24 (B) by inserting “(I)” after “(iv)”; and

25 (C) by adding at the end the following:

1 “(II) An employer that violates this clause shall
2 be liable to any employee harmed by such violation
3 for lost wages and benefits.”; and

4 (5) in clause (vi)—

5 (A) by amending subclause (I) to read as
6 follows:

7 “(I) It is a violation of this clause for an em-
8 ployer who has filed an application under this sub-
9 section—

10 “(aa) to require an H–1B nonimmigrant to
11 pay a penalty for ceasing employment with the
12 employer prior to a date agreed to by the non-
13 immigrant and the employer (the Secretary
14 shall determine whether a required payment is
15 a penalty, and not liquidated damages, pursu-
16 ant to relevant State law); and

17 “(bb) to fail to offer to an H–1B non-
18 immigrant, during the nonimmigrant’s period of
19 authorized employment, on the same basis, and
20 in accordance with the same criteria, as the em-
21 ployer offers to similarly situated United States
22 workers, benefits and eligibility for benefits, in-
23 cluding—

1 “(AA) the opportunity to participate
2 in health, life, disability, and other insur-
3 ance plans;

4 “(BB) the opportunity to participate
5 in retirement and savings plans; and

6 “(CC) cash bonuses and noncash com-
7 pensation, such as stock options (whether
8 or not based on performance).”; and

9 (B) in subclause (III), by striking
10 “\$1,000” and inserting “\$2,000”.

11 **SEC. 4223. INITIATION OF INVESTIGATIONS.**

12 Subparagraph (G) of section 212(n)(2) (8 U.S.C.
13 1182(n)(2)) is amended—

14 (1) in clause (i), by striking “if the Secretary”
15 and all that follows and inserting “with regard to
16 the employer’s compliance with the requirements of
17 this subsection.”;

18 (2) in clause (ii), by striking “and whose iden-
19 tity” and all that follows through “failure or fail-
20 ures.” and inserting “the Secretary of Labor may
21 conduct an investigation into the employer’s compli-
22 ance with the requirements of this subsection.”;

23 (3) in clause (iii), by striking the last sentence;

24 (4) by striking clauses (iv) and (v);

1 (5) by redesignating clauses (vi), (vii), and (viii)
2 as clauses (iv), (v), and (vi), respectively;

3 (6) in clause (iv), as so redesignated, by strik-
4 ing “meet a condition described in clause (ii), unless
5 the Secretary of Labor receives the information not
6 later than 12 months” and inserting “comply with
7 the requirements under this subsection, unless the
8 Secretary of Labor receives the information not later
9 than 24 months”;

10 (7) by amending clause (v), as so redesignated,
11 to read as follows:

12 “(v) The Secretary of Labor shall provide no-
13 tice to an employer of the intent to conduct an in-
14 vestigation. The notice shall be provided in such a
15 manner, and shall contain sufficient detail, to permit
16 the employer to respond to the allegations before an
17 investigation is commenced. The Secretary is not re-
18 quired to comply with this clause if the Secretary de-
19 termines that such compliance would interfere with
20 an effort by the Secretary to investigate or secure
21 compliance by the employer with the requirements of
22 this subsection. A determination by the Secretary
23 under this clause shall not be subject to judicial re-
24 view.”;

1 (8) in clause (vi), as so redesignated, by strik-
2 ing “An investigation” and all that follows through
3 “the determination.” and inserting “If the Secretary
4 of Labor, after an investigation under clause (i) or
5 (ii), determines that a reasonable basis exists to
6 make a finding that the employer has failed to com-
7 ply with the requirements under this subsection, the
8 Secretary shall provide interested parties with notice
9 of such determination and an opportunity for a
10 hearing in accordance with section 556 of title 5,
11 United States Code, not later than 120 days after
12 the date of such determination.”; and

13 (9) by adding at the end the following:

14 “(vii) If the Secretary of Labor, after a hear-
15 ing, finds a reasonable basis to believe that the em-
16 ployer has violated the requirements under this sub-
17 section, the Secretary shall impose a penalty under
18 subparagraph (C).”.

19 **SEC. 4224. INFORMATION SHARING.**

20 Section 212(n)(2) (8 U.S.C. 1182(n)(2)), as amended
21 by sections 4222 and 4223, is further amended by adding
22 at the end the following:

23 “(J) The Director of U.S. Citizenship and Immigra-
24 tion Services shall provide the Secretary of Labor with any
25 information contained in the materials submitted by em-

1 ployers of H–1B nonimmigrants as part of the adjudica-
2 tion process that indicates that the employer is not com-
3 plying with visa program requirements for H–1B non-
4 immigrants. The Secretary of Labor may initiate and con-
5 duct an investigation related to H–1B nonimmigrants and
6 hearing under this paragraph after receiving information
7 of noncompliance under this subparagraph. This subpara-
8 graph may not be construed to prevent the Secretary of
9 Labor from taking action related to wage and hour and
10 workplace safety laws.”.

11 **CHAPTER 3—OTHER PROTECTIONS**

12 **SEC. 4231. POSTING AVAILABLE POSITIONS THROUGH THE** 13 **DEPARTMENT OF LABOR.**

14 (a) DEPARTMENT OF LABOR WEBSITE.—Section
15 212(n) (8 U.S.C. 1182(n)) is amended by adding at the
16 end following:

17 “(6)(A) Not later than 90 days after the date of the
18 enactment of the Border Security, Economic Opportunity,
19 and Immigration Modernization Act, the Secretary of
20 Labor shall establish a searchable Internet website for
21 posting positions as required by paragraph (1)(C). Such
22 website shall be available to the public without charge.

23 “(B) The Secretary may work with private companies
24 or nonprofit organizations to develop and operate the
25 Internet website described in subparagraph (A).

1 “(C) The Secretary may promulgate rules, after no-
2 tice and a period for comment, to carry out the require-
3 ments of this paragraph.”.

(b) REQUIREMENT FOR PUBLICATION.—The Secretary of Labor shall submit to Congress and publish in the Federal Register and other appropriate media a notice of the date that the Internet website required by paragraph (6) of section 212(n) of such Act, as amended by subsection (a), will be operational.

10 (c) APPLICATION.—The amendments made by sub-
11 section (a) shall apply to an application filed on or after
12 the date that is 30 days after the date described in sub-
13 section (b).

14 SEC. 4232. REQUIREMENTS FOR INFORMATION FOR H-1B
15 AND L NONIMMIGRANTS.

16 (a) IN GENERAL.—Section 214 (8 U.S.C. 1184), as
17 amended by section 3608, is further amended by adding
18 at the end the following:

19 “(t) REQUIREMENTS FOR INFORMATION FOR H-1B
20 AND L NONIMMIGRANTS.—

“(1) IN GENERAL.—Upon issuing a visa to an applicant for nonimmigrant status pursuant to subparagraph (H)(i)(b) or (L) of section 101(a)(15) who is outside the United States, the issuing office shall provide the applicant with—

1 “(A) a brochure outlining the obligations
2 of the applicant’s employer and the rights of
3 the applicant with regard to employment under
4 Federal law, including labor and wage protec-
5 tions; and

6 “(B) the contact information for appro-
7 priate Federal agencies or departments that
8 offer additional information or assistance in
9 clarifying such obligations and rights.

10 “(2) PROVISION OF MATERIAL.—Upon the ap-
11 proval of an application of an applicant referred to
12 in paragraph (1), the applicant shall be provided
13 with the material described in subparagraphs (A)
14 and (B) of paragraph (1)—

15 “(A) by the issuing officer of the Depart-
16 ment of Homeland Security, if the applicant is
17 inside the United States; or

18 “(B) by the appropriate official of the De-
19 partment of State, if the applicant is outside
20 the United States.

21 “(3) EMPLOYER TO PROVIDE IMMIGRATION PA-
22 PERWORK EXCHANGED WITH FEDERAL AGENCIES.—

23 “(A) IN GENERAL.—Not later than 30
24 days after a labor condition application is filed
25 under section 212(n)(1), an employer shall pro-

1 vide an employee or beneficiary of such applica-
2 tion who is or seeking nonimmigrant status
3 under subparagraph (H)(i)(b) or (L) of section
4 101(a)(15) with a copy the original of all appli-
5 cations and petitions filed by the employer with
6 the Department of Labor or the Department of
7 Homeland Security for such employee or bene-
8 ficiary.

9 “(B) WITHHOLDING OF FINANCIAL OR
10 PROPRIETARY INFORMATION.—If a document
11 required to be provided to an employee or bene-
12 ficiary under subparagraph (A) includes any fi-
13 nancial or propriety information of the em-
14 ployer, the employer may redact such informa-
15 tion from the copies provided to such employee
16 or beneficiary.”.

17 (b) REPORT ON JOB CLASSIFICATION AND WAGE
18 DETERMINATIONS.—Not later than 1 year after the date
19 of the enactment of this Act, the Comptroller General of
20 the United States shall prepare a report analyzing the ac-
21 curacy and effectiveness of the Secretary of Labor’s cur-
22 rent job classification and wage determination system. The
23 report shall—

- 1 (1) specifically address whether the systems in
2 place accurately reflect the complexity of current job
3 types as well as geographic wage differences; and
4 (2) make recommendations concerning nec-
5 essary updates and modifications.

6 **SEC. 4233. FILING FEE FOR H-1B-DEPENDENT EMPLOYERS.**

7 (a) IN GENERAL.—Notwithstanding any other provi-
8 sion of law, there shall be a fee required to be submitted
9 by an employer with an application for admission of an
10 H-1B nonimmigrant as follows:

11 (1) For each fiscal year beginning in fiscal year
12 2015, \$5,000 for applicants that employ 50 or more
13 employees in the United States if more than 30 per-
14 cent and less than 50 percent of the applicant's em-
15 ployees are H-1B nonimmigrants or L non-
16 immigrants.

17 (2) For each of the fiscal years 2015 through
18 2017, \$10,000 for applicants that employ 50 or
19 more employees in the United States if more than
20 50 percent and less than 75 percent of the appli-
21 cant's employees are H-1B nonimmigrants or L
22 nonimmigrants. Fees collected under this paragraph
23 shall be deposited in the Comprehensive Immigration
24 Reform Trust Fund established under section
25 6(a)(1).

1 (b) DEFINITIONS.—In this section:

2 (1) EMPLOYER.—The term “employer”—

3 (A) means any entity or entities treated as
4 a single employer under subsection (b), (c),
5 (m), or (o) of section 414 of the Internal Rev-
6 enue Code of 1986; and

7 (B) does not include a nonprofit institution
8 of higher education or a nonprofit research or-
9 ganization described in section 501(c)(3) of the
10 Internal Revenue Code of 1986 and exempt
11 from taxation under 501(a) of that Code that
12 is—

13 (i) an institution of higher education
14 (as defined in section 101(a) of the Higher
15 Education Act of 1965 (20 U.S.C.
16 1001(a))); or

17 (ii) a research organization.

18 (2) H-1B NONIMMIGRANT.—The term “H-1B
19 nonimmigrant” means an alien admitted as a non-
20 immigrant pursuant to section 101(a)(15)(H)(i)(b)
21 of the Immigration and Nationality Act (8 U.S.C.
22 1101(a)(15)(H)(i)(b)).

23 (3) INTENDING IMMIGRANT.—The term “in-
24 tending immigrant” has the meaning given that
25 term in paragraph (54)(A) of section 101(a)(54)(A)

1 of the Immigration and Nationality Act (8 U.S.C.
2 1101(a)).

3 (4) L NONIMMIGRANT.—The term “L non-
4 immigrant” means an alien admitted as a non-
5 immigrant pursuant to section 101(a)(15)(L) of the
6 Immigration and Nationality Act (8 U.S.C.
7 1101(a)(15)(L)) to provide services to the alien’s
8 employer involving specialized knowledge.

9 (c) EXCEPTION FOR INTENDING IMMIGRANTS.—In
10 determining the percentage of employees of an employer
11 that are H–1B nonimmigrants or L nonimmigrants under
12 subsection (a), an intending immigrant employee shall not
13 count toward such percentage.

14 (d) CONFORMING AMENDMENT.—Section 402 of the
15 Act entitled “An Act making emergency supplemental ap-
16 propriations for border security for the fiscal year ending
17 September 30, 2010, and for other purposes”, approved
18 August 13, 2010 (Public Law 111–230; 8 U.S.C. 1101
19 note) is amended by striking subsection (b).

20 **SEC. 4234. PROVIDING PREMIUM PROCESSING OF EMPLOY-**
21 **MENT-BASED VISA PETITIONS.**

22 Pursuant to section 286(u) of the Immigration and
23 Nationality Act (8 U.S.C. 1356(u)), the Secretary shall
24 establish and collect—

1 (1) a fee for premium processing of employ-
2 ment-based immigrant petitions; and

3 (2) a fee for premium processing of an adminis-
4 trative appeal of any decision on a permanent em-
5 ployment-based immigrant petition.

6 **SEC. 4235. TECHNICAL CORRECTION.**

7 Section 212 (8 U.S.C. 1182) is amended by redesign-
8 nating the second subsection (t), as added by section
9 1(b)(2)(B) of the Act entitled “An Act to amend and ex-
10 tend the Irish Peace Process Cultural and Training Pro-
11 gram Act of 1998” (Public Law 108–449 (118 Stat.
12 3470)), as subsection (u).

13 **SEC. 4236. APPLICATION.**

14 Except as specifically otherwise provided, the amend-
15 ments made by this subtitle shall apply to applications
16 filed on or after the date of the enactment of this Act.

17 **Subtitle C—L Visa Fraud and**
18 **Abuse Protections**

19 **SEC. 4301. PROHIBITION ON OUTPLACEMENT OF L NON-**
20 **IMMIGRANTS.**

21 Subparagraph (F) of section 214(c)(2) (8 U.S.C.
22 1184(c)(2)) is amended to read as follows:

23 “(F) The employer of an alien described in section
24 101(a)(15)(L) shall not place, outsource, lease, or other-

1 wise contract for the services or placement of such alien
2 with another employer unless—

3 “(i) such alien will not be controlled or super-
4 vised principally by the employer with whom such
5 alien would be placed;

6 “(ii) the placement of such alien at the worksite
7 of the other employer is not essentially an arrange-
8 ment to provide labor for hire for the other em-
9 ployer; and

10 “(iii) the other employer attests that the other
11 employer has not displaced and will not displace a
12 United States worker during the period beginning
13 90 days prior to and 90 days after the date the em-
14 ployer files the application.”.

15 **SEC. 4302. L EMPLOYER PETITION REQUIREMENTS FOR**
16 **EMPLOYMENT AT NEW OFFICES.**

17 Section 214(c)(2) (8 U.S.C. 1184(c)(2)) is amended
18 by adding at the end the following:

19 “(G)(i) If the beneficiary of a petition under this
20 paragraph is coming to the United States to open, or be
21 employed in, a new office, the petition may be approved
22 for up to 12 months only if—

23 “(I) the alien has not been the beneficiary of 2
24 or more petitions under this subparagraph during
25 the immediately preceding 2 years; and

1 “(II) the employer operating the new office
2 has—

3 “(aa) an adequate business plan;

4 “(bb) sufficient physical premises to carry
5 out the proposed business activities; and

6 “(cc) the financial ability to commence
7 doing business immediately upon the approval
8 of the petition.

9 “(ii) An extension of the approval period under clause
10 (i) may not be granted until the importing employer sub-
11 mits an application to the Secretary of Homeland Security
12 that contains—

13 “(I) evidence that the importing employer
14 meets the requirements of this subsection;

15 “(II) evidence that the beneficiary of the peti-
16 tion is eligible for nonimmigrant status under sec-
17 tion 101(a)(15)(L);

18 “(III) a statement summarizing the original pe-
19 tition;

20 “(IV) evidence that the importing employer has
21 complied with the business plan submitted under
22 clause (i)(I);

23 “(V) evidence of the truthfulness of any rep-
24 resentations made in connection with the filing of
25 the original petition;

1 “(VI) evidence that the importing employer has
2 been doing business at the new office through reg-
3 ular, systematic, and continuous provision of goods
4 and services;

5 “(VII) a statement of the duties the beneficiary
6 has performed at the new office during the approval
7 period under clause (i) and the duties the beneficiary
8 will perform at the new office during the extension
9 period granted under this clause;

10 “(VIII) a statement describing the staffing at
11 the new office, including the number of employees
12 and the types of positions held by such employees;

13 “(IX) evidence of wages paid to employees;

14 “(X) evidence of the financial status of the new
15 office; and

16 “(XI) any other evidence or data prescribed by
17 the Secretary.

18 “(iii) A new office employing the beneficiary of an
19 L-1 petition approved under this paragraph shall do busi-
20 ness only through regular, systematic, and continuous pro-
21 vision of goods and services.

22 “(iv) Notwithstanding clause (ii), and subject to the
23 maximum period of authorized admission set forth in sub-
24 paragraph (D), the Secretary of Homeland Security, in
25 the Secretary’s discretion, may approve a subsequently

1 filed petition on behalf of the beneficiary to continue em-
2 ployment at the office described in this subparagraph for
3 a period beyond the initially granted 12-month period if
4 the importing employer has been doing business at the
5 new office through regular, systematic, and continuous
6 provision of goods and services for the 6 months imme-
7 diately preceding the date of extension of petition filing
8 and demonstrates that the failure to satisfy any of the
9 requirements described in those subclauses was directly
10 caused by extraordinary circumstances, as determined by
11 the Secretary in the Secretary's discretion.”.

12 **SEC. 4303. COOPERATION WITH SECRETARY OF STATE.**

13 Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended
14 by section 4302, is further amended by adding at the end
15 the following:

16 “(H) For purposes of approving petitions under this
17 paragraph, the Secretary of Homeland Security shall work
18 cooperatively with the Secretary of State to verify the ex-
19 istence or continued existence of a company or office in
20 the United States or in a foreign country.”.

21 **SEC. 4304. LIMITATION ON EMPLOYMENT OF L NON-**
22 **IMMIGRANTS.**

23 Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended
24 by sections 4302 and 4303, is further amended by adding
25 at the end the following:

1 “(I)(i) If the employer employs 50 or more employees
2 in the United States, the sum of the number of such em-
3 ployees who are H–1B nonimmigrants plus the number
4 of such employees who are L nonimmigrants may not ex-
5 ceed—

6 “(I) 75 percent of the total number of employ-
7 ees, for fiscal year 2015;

8 “(II) 65 percent of the total number of employ-
9 ees, for fiscal year 2016; and

10 “(III) 50 percent of the total number of em-
11 ployees, for each fiscal year after fiscal year 2016.

12 “(ii) In this subparagraph:

13 “(I) The term ‘employer’ does not include a
14 nonprofit institution of higher education or a non-
15 profit research organization described in section
16 501(c)(3) of the Internal Revenue Code of 1986 and
17 exempt from taxation under 501(a) of that Code
18 that is—

19 “(aa) an institution of higher education (as
20 defined in section 101(a) of the Higher Edu-
21 cation Act of 1965 (20 U.S.C. 1001(a))); or

22 “(bb) a research organization.

23 “(II) The term ‘H–1B nonimmigrant’ means an
24 alien admitted as a nonimmigrant pursuant to sec-
25 tion 101(a)(15)(H)(i)(b).

1 “(III) The term ‘L nonimmigrant’ means an
2 alien admitted as a nonimmigrant pursuant to sec-
3 tion 101(a)(15)(L) to provide services to the alien’s
4 employer involving specialized knowledge.

5 “(iii) In determining the percentage of employees of
6 an employer that are H–1B nonimmigrants or L non-
7 immigrants under clause (i), an intending immigrant em-
8 ployee shall not count toward such percentage.”.

9 **SEC. 4305. FILING FEE FOR L NONIMMIGRANTS.**

10 (a) IN GENERAL.—Notwithstanding any other provi-
11 sion of law, the filing fee for an application for admission
12 of an L nonimmigrant shall be as follows:

13 (1) For each of the fiscal years beginning in fis-
14 cal year 2014, \$5,000 for applicants that employ 50
15 or more employees in the United States if more than
16 30 percent and less than 50 percent of the appli-
17 cant’s employees are H–1B nonimmigrants or L
18 nonimmigrants.

19 (2) For each of the fiscal years 2014 through
20 2017, \$10,000 for applicants that employ 50 or
21 more employees in the United States if more than
22 50 percent and less than 75 percent of the appli-
23 cant’s employees are H–1B nonimmigrants or L
24 nonimmigrants. Fees collected under this paragraph
25 shall be deposited in the Comprehensive Immigration

1 Reform Trust Fund established under section
2 6(a)(1).

3 (b) DEFINITIONS.—In this section:

4 (1) EMPLOYER.—The term “employer” does
5 not include a nonprofit institution of higher edu-
6 cation or a nonprofit research organization described
7 in section 501(c)(3) of the Internal Revenue Code of
8 1986 and exempt from taxation under 501(a) of
9 that Code that is—

10 (A) an institution of higher education (as
11 defined in section 101(a) of the Higher Edu-
12 cation Act of 1965 (20 U.S.C. 1001(a))); or

13 (B) a research organization.

14 (2) H-1B NONIMMIGRANT.—The term “H-1B
15 nonimmigrant” means an alien admitted as a non-
16 immigrant pursuant to section 101(a)(15)(H)(i)(b)
17 of the Immigration and Nationality Act (8 U.S.C.
18 1101(a)(15)(H)(i)(b)).

19 (3) L NONIMMIGRANT.—The term “L non-
20 immigrant” means an alien admitted as a non-
21 immigrant pursuant to section 101(a)(15)(L) of the
22 Immigration and Nationality Act (8 U.S.C.
23 1101(a)(15)(L)) to provide services to the alien’s
24 employer involving specialized knowledge.

1 (c) EXCEPTION FOR INTENDING IMMIGRANTS.—In
2 determining the percentage of employees of an employer
3 that are H–1B nonimmigrants or L nonimmigrants under
4 subsection (a), an intending immigrant employee (as de-
5 fined in section 101(a)(54)(A) of the Immigration and Na-
6 tionality Act shall not count toward such percentage.

7 (d) CONFORMING AMENDMENT.—Section 402 of the
8 Act entitled “An Act making emergency supplemental ap-
9 propriations for border security for the fiscal year ending
10 September 30, 2010, and for other purposes”, approved
11 August 13, 2010 (Public Law 111–230; 8 U.S.C. 1101
12 note), as amended by section 4233(d), is further amended
13 by striking subsections (a) and (c).

14 **SEC. 4306. INVESTIGATION AND DISPOSITION OF COM-**
15 **PLAINTS AGAINST L NONIMMIGRANT EM-**
16 **PLOYERS.**

17 Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended
18 by sections 4302, 4303, and 4304 is further amended by
19 adding at the end the following:

20 “(J)(i) The Secretary of Homeland Security may ini-
21 tiate an investigation of any employer that employs non-
22 immigrants described in section 101(a)(15)(L) with re-
23 gard to the employer’s compliance with the requirements
24 of this subsection.

1 “(ii)(I) If the Secretary receives specific credible in-
2 formation from a source who is likely to have knowledge
3 of an employer’s practices, employment conditions, or
4 compliance with the requirements under this subsection,
5 the Secretary may conduct an investigation into the em-
6 ployer’s compliance with the requirements of this sub-
7 section.

8 “(II) The Secretary may withhold the identity of a
9 source referred to in subclause (I) from an employer and
10 the identity of such source shall not be subject to disclo-
11 sure under section 552 of title 5, United States Code.

12 “(iii) The Secretary shall establish a procedure for
13 any person desiring to provide to the Secretary informa-
14 tion described in clause (ii)(I) that may be used, in whole
15 or in part, as the basis for the commencement of an inves-
16 tigation described in such clause, to provide the informa-
17 tion in writing on a form developed and provided by the
18 Secretary and completed by or on behalf of the person.

19 “(iv) No investigation described in clause (ii)(I) (or
20 hearing described in clause (vi) based on such investiga-
21 tion) may be conducted with respect to information about
22 a failure to comply with the requirements under this sub-
23 section, unless the Secretary receives the information not
24 later than 24 months after the date of the alleged failure.

1 “(v)(I) Subject to subclause (III), before commencing
2 an investigation of an employer under clause (i) or (ii),
3 the Secretary shall provide notice to the employer of the
4 intent to conduct such investigation.

5 “(II) The notice required by subclause (I) shall be
6 provided in such a manner, and shall contain sufficient
7 detail, to permit the employer to respond to the allegations
8 before an investigation is commenced.

9 “(III) The Secretary is not required to comply with
10 this clause if the Secretary determines that to do so would
11 interfere with an effort by the Secretary to investigate or
12 secure compliance by the employer with the requirements
13 of this subsection.

14 “(IV) There shall be no judicial review of a deter-
15 mination by the Secretary under this clause.

16 “(vi) If the Secretary, after an investigation under
17 clause (i) or (ii), determines that a reasonable basis exists
18 to make a finding that the employer has failed to comply
19 with the requirements under this subsection, the Secretary
20 shall provide the interested parties with notice of such de-
21 termination and an opportunity for a hearing in accord-
22 ance with section 556 of title 5, United States Code, not
23 later than 120 days after the date of such determination.
24 If such a hearing is requested, the Secretary shall make

1 a finding concerning the matter by not later than 120 days
2 after the date of the hearing.

3 “(vii) If the Secretary, after a hearing, finds a rea-
4 sonable basis to believe that the employer has violated the
5 requirements under this subsection, the Secretary shall
6 impose a penalty under subparagraph (K).

7 “(viii)(I) The Secretary may conduct voluntary sur-
8 veys of the degree to which employers comply with the re-
9 quirements under this section.

10 “(II) The Secretary shall—

11 “(aa) conduct annual compliance audits of each
12 employer with more than 100 employees who work
13 in the United States if more than 15 percent of such
14 employees are nonimmigrants described in
15 101(a)(15)(L); and

16 “(bb) make available to the public an executive
17 summary or report describing the general findings of
18 the audits carried out pursuant to this subclause.”.

19 **SEC. 4307. PENALTIES.**

20 Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended
21 by sections 4302, 4303, 4304, and 4306, is further
22 amended by adding at the end the following:

23 “(K)(i) If the Secretary of Homeland Security finds,
24 after notice and an opportunity for a hearing, a failure
25 by an employer to meet a condition under subparagraph

1 (F), (G), or (L) or a misrepresentation of material fact
2 in a petition to employ 1 or more aliens as nonimmigrants
3 described in section 101(a)(15)(L)—

4 “(I) the Secretary shall impose such administrative
5 remedies (including civil monetary penalties in an amount
6 not to exceed \$2,000 per violation) as the Secretary deter-
7 mines to be appropriate;

8 “(II) the Secretary may not, during a period of at
9 least 1 year, approve a petition for that employer to em-
10 ploy 1 or more aliens as such nonimmigrants; and

11 “(III) in the case of a violation of subparagraph (J),
12 the employer shall be liable to the employees harmed by
13 such violation for lost wages and benefits.

14 “(ii) If the Secretary finds, after notice and an oppor-
15 tunity for a hearing, a willful failure by an employer to
16 meet a condition under subparagraph (F), (G), or (L) or
17 a willful misrepresentation of material fact in a petition
18 to employ 1 or more aliens as nonimmigrants described
19 in section 101(a)(15)(L)—

20 “(I) the Secretary shall impose such adminis-
21 trative remedies (including civil monetary penalties
22 in an amount not to exceed \$10,000 per violation)
23 as the Secretary determines to be appropriate;

24 “(II) the Secretary may not, during a period of
25 at least 2 years, approve a petition filed for that em-

1 ployer to employ 1 or more aliens as such non-
2 immigrants; and

3 “(III) in the case of a violation of subparagraph
4 (J), the employer shall be liable to the employees
5 harmed by such violation for lost wages and bene-
6 fits.”.

7 **SEC. 4308. PROHIBITION ON RETALIATION AGAINST L NON-**
8 **IMMIGRANTS.**

9 Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended
10 by sections 4302, 4303, 4303, 4306, and 4307, is further
11 amended by adding at the end the following:

12 “(L)(i) It is a violation of this subparagraph for an
13 employer who has filed a petition to import 1 or more
14 aliens as nonimmigrants described in section
15 101(a)(15)(L) to take, fail to take, or threaten to take
16 or fail to take, a personnel action, or to intimidate, threat-
17 en, restrain, coerce, blacklist, discharge, or discriminate
18 in any other manner against an employee because the em-
19 ployee—

20 “(I) has disclosed information that the em-
21 ployee reasonably believes evidences a violation of
22 this subsection, or any rule or regulation pertaining
23 to this subsection; or

1 “(II) cooperates or seeks to cooperate with the
2 requirements of this subsection, or any rule or regu-
3 lation pertaining to this subsection.

4 “(ii) In this subparagraph, the term ‘employee’ in-
5 cludes—

6 “(I) a current employee;

7 “(II) a former employee; and

8 “(III) an applicant for employment.”.

9 **SEC. 4309. REPORTS ON L NONIMMIGRANTS.**

10 Section 214(c)(8) (8 U.S.C. 1184(c)(8)) is amended
11 by inserting “(L),” after “(H),”.

12 **SEC. 4310. APPLICATION.**

13 The amendments made by this subtitle shall apply to
14 applications filed on or after the date of the enactment
15 of this Act.

16 **SEC. 4311. REPORT ON L BLANKET PETITION PROCESS.**

17 (a) REQUIREMENT FOR REPORT.—Not later than 6
18 months after the date of the enactment of this Act, the
19 Inspector General of the Department shall submit to the
20 appropriate committees of Congress a report regarding the
21 use of blanket petitions under section 214(c)(2)(A) of the
22 Immigration and Nationality Act (8 U.S.C.
23 1184(c)(2)(A)). Such report shall assess the efficiency and
24 reliability of the process for reviewing such blanket peti-

1 tions, including whether the process includes adequate
2 safeguards against fraud and abuse.

3 (b) APPROPRIATE COMMITTEES OF CONGRESS.—In
4 this section the term “appropriate committees of Con-
5 gress” means—

6 (1) the Committee on Homeland Security and
7 Governmental Affairs of the Senate;

8 (2) the Committee on the Judiciary of the Sen-
9 ate;

10 (3) the Committee on Homeland Security of the
11 House of Representatives; and

12 (4) the Committee on the Judiciary of the
13 House of Representatives.

14 **Subtitle D—Other Nonimmigrant**
15 **Visas**

16 **SEC. 4401. NONIMMIGRANT VISAS FOR STUDENTS.**

17 (a) AUTHORIZATION OF DUAL INTENT FOR F NON-
18 IMMIGRANTS SEEKING BACHELOR’S OR GRADUATE DE-
19 GREES.—

20 (1) IN GENERAL.—Section 101(a)(15)(F) (8
21 U.S.C. 1101(a)(15)(F)) is amended to read as fol-
22 lows:

23 “(F)(i) an alien having a residence in a
24 foreign country who is a bona fide student
25 qualified to pursue a full course of study and

1 who seeks to enter the United States tempo-
2 rarily and solely for the purpose of pursuing
3 such a course of study consistent with section
4 214(m) at an accredited college, university, or
5 language training program, or at an established
6 seminary, conservatory, academic high school,
7 elementary school, or other academic institution
8 in the United States, particularly designated by
9 the alien and approved by the Secretary of
10 Homeland Security after consultation with the
11 Secretary of Education, which institution or
12 place of study shall have agreed to report to the
13 Secretary of Homeland Security the termination
14 of attendance of each nonimmigrant student,
15 and if any such institution of learning or place
16 of study fails to make reports promptly the ap-
17 proval shall be withdrawn, except that such an
18 alien who is not seeking to pursue a degree that
19 is a bachelor's degree or a graduate degree shall
20 have a residence in a foreign country that the
21 alien has no intention of abandoning;

22 “(ii) the alien spouse and minor children of
23 any alien described in clause (i) if accom-
24 panying or following to join such an alien; and

1 “(iii) an alien who is a national of Canada
2 or Mexico, who maintains actual residence and
3 place of abode in the country of nationality,
4 who is described in clause (i) except that the
5 alien’s qualifications for and actual course of
6 study may be full or part-time, and who com-
7 mutes to the United States institution or place
8 of study from Canada or Mexico.”.

9 (2) PRESUMPTION OF STATUS; INTENTION TO
10 ABANDON FOREIGN RESIDENCE.—Section 214 (8
11 U.S.C. 1184) is amended—

12 (A) in subsection (b), as amended by sec-
13 tion 2405(a), by striking “(L) or (V)” and in-
14 serting “(F), (L), or (V)”; and

15 (B) in subsection (h), by striking
16 “(H)(i)(b) or (c),” and inserting “(F),
17 (H)(i)(b), (H)(i)(c),”.

18 (b) ACCREDITATION REQUIREMENT FOR COLLEGES
19 AND UNIVERSITIES.—Section 101(a)(52) (8 U.S.C.
20 1101(a)(52)) is amended to read as follows:

21 “(52) Except as provided in section 214(m)(4),
22 the term ‘accredited college, university, or language
23 training program’ means a college, university, or
24 language training program that is accredited by an

1 accrediting agency recognized by the Secretary of
2 Education.”.

3 (c) OTHER REQUIREMENTS FOR ACADEMIC INSTITU-
4 TIONS.—Section 214(m) (8 U.S.C. 1184(m)) is amended
5 by adding at the end the following:

6 “(3) The Secretary of Homeland Security, in the Sec-
7 retary’s discretion, may require accreditation of an aca-
8 demic institution (except for seminaries or other religious
9 institutions) for purposes of section 101(a)(15)(F) if—

10 “(A) that institution is not already required to
11 be accredited under section 101(a)(15)(F)(i);

12 “(B) an appropriate accrediting agency recog-
13 nized by the Secretary of Education is able to pro-
14 vide such accreditation; and

15 “(C) the institution has or will have 25 or more
16 alien students accorded status as nonimmigrants
17 under clause (i) or (iii) of section 101(a)(15)(F)
18 pursuing a course of study at that institution.

19 “(4) The Secretary of Homeland Security, in the Sec-
20 retary’s discretion, may waive the accreditation require-
21 ment in section 101(a)(15)(F)(i) with respect to an estab-
22 lished college, university, or language training program if
23 the academic institution—

24 “(A) is otherwise in compliance with the re-
25 quirements of such section; and

1 “(B) is making a good faith effort to satisfy the
2 accreditation requirement.

3 “(5)(A) No person convicted of an offense referred
4 to in subparagraph (B) shall be permitted by any aca-
5 demic institution having authorization for attendance by
6 nonimmigrant students under section 101(a)(15)(F)(i) to
7 be involved with the institution as its principal, owner, of-
8 ficer, board member, general partner, or other similar po-
9 sition of substantive authority for the operations or man-
10 agement of the institution, including serving as an indi-
11 vidual designated by the institution to maintain records
12 required by the Student and Exchange Visitor Information
13 System established under section 641 of the Illegal Immi-
14 gration Reform and Immigrant Responsibility Act of 1996
15 (8 U.S.C. 1372).

16 “(B) An offense referred to in this subparagraph in-
17 cludes a violation, punishable by a term of imprisonment
18 of more than 1 year, of any of the following:

19 “(i) Chapter 77 of title 18, United States Code
20 (relating to peonage, slavery and trafficking in per-
21 sons).

22 “(ii) Chapter 117 of title 18, United States
23 Code (relating to transportation for illegal sexual ac-
24 tivity and related crimes).

1 “(iii) Section 274 of the Immigration and Na-
2 tionality Act (8 U.S.C. 1324) (relating to unlawful
3 bringing of aliens into the United States).

4 “(iv) Section 1546 of title 18, United States
5 Code (relating to fraud and misuse of visas, permits,
6 and other documents) relating to an academic insti-
7 tution’s participation in the Student and Exchange
8 Visitor Program.”.

9 (d) CONFORMING AMENDMENT.—Section
10 212(a)(6)(G) (8 U.S.C. 1182(a)(6)(G)) is amended by
11 striking “section 214(l)” and inserting “section 214(m)”.

12 (e) EFFECTIVE DATE.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), the amendments made by subsections (a),
15 (b), and (c)—

16 (A) shall take effect on the date that is
17 180 days after the date of the enactment of this
18 Act; and

19 (B) shall apply with respect to applications
20 for a nonimmigrant visa under section
21 101(a)(15)(F)(i) of the Immigration and Na-
22 tionality Act (8 U.S.C. 1101(a)(15)(F)(i)) that
23 are filed on or after the effective date described
24 in subparagraph (A).

25 (2) TEMPORARY EXCEPTION.—

1 (A) IN GENERAL.—During the 3-year pe-
2 riod beginning on the date of the enactment of
3 this Act, an alien seeking to enter the United
4 States to pursue a course of study at a college
5 or university that has been certified by the Sec-
6 retary may be granted a nonimmigrant visa
7 under clause (i) or clause (iii) of section
8 101(a)(15)(F) of the Immigration and Nation-
9 ality Act (8 U.S.C. 1101(a)(15)(F)) without re-
10 gard to whether or not that college or university
11 has been accredited or been denied accredita-
12 tion by an entity described in section
13 101(a)(52) of such Act (8 U.S.C. 1101(a)(52)),
14 as amended by subsection (b).

15 (B) ADDITIONAL REQUIREMENT.—An
16 alien may not be granted a nonimmigrant visa
17 under subparagraph (A) if the college or univer-
18 sity to which the alien seeks to enroll does
19 not—

20 (i) submit an application for the ac-
21 creditation of such institution to a regional
22 or national accrediting agency recognized
23 by the Secretary of Education on or before
24 the date that is 1 year after the effective
25 date described in paragraph (1)(A); and

1 (ii) comply with the applicable accred-
2 iting requirements of such agency.

3 **SEC. 4402. CLASSIFICATION FOR SPECIALTY OCCUPATION**
4 **WORKERS FROM FREE TRADE COUNTRIES.**

5 (a) NONIMMIGRANT STATUS.—Section
6 101(a)(15)(E)(8 U.S.C. 1101(a)(15)(E)) is amended—

7 (1) in the matter preceding clause (i), by insert-
8 ing “, bilateral investment treaty, or free trade
9 agreement” after “treaty of commerce and naviga-
10 tion”;

11 (2) in clause (ii), by striking “or” at the end;
12 and

13 (3) by adding at the end the following:

14 “(iv) solely to perform services in a
15 specialty occupation in the United States if
16 the alien is a national of a country, other
17 than Chile, Singapore, or Australia, with
18 which the United States has entered into a
19 free trade agreement (regardless of wheth-
20 er such an agreement is a treaty of com-
21 merce and navigation) and with respect to
22 whom the Secretary of Labor determines
23 and certifies to the Secretary of Homeland
24 Security and the Secretary of State that
25 the intending employer has filed with the

1 Secretary of Labor an attestation under
2 section 212(t); or

3 “(v) solely to perform services in a
4 specialty occupation in the United States if
5 the alien is a national of the Republic of
6 Korea and with respect to whom the Sec-
7 retary of Labor determines and certifies to
8 the Secretary of Homeland Security and
9 the Secretary of State that the intending
10 employer has filed with the Secretary of
11 Labor an attestation under section
12 212(t);”.

13 (b) FREE TRADE AGREEMENTS.—Section 214(g) (8
14 U.S.C. 1184(g)) is amended by adding at the end the fol-
15 lowing:

16 “(12)(A) The free trade agreements referred to in
17 section 101(a)(15)(E)(iv) are defined as any free trade
18 agreement designated by the Secretary of Homeland Secu-
19 rity with the concurrence of the United States Trade Rep-
20 resentative and the Secretary of State.

21 “(B) The Secretary of State may not approve a num-
22 ber of initial applications submitted for aliens described
23 in clause (iv) or (v) of section 101(a)(15)(E) that is more
24 than 5,000 per fiscal year for each country with which

1 the United States has entered into a Free Trade Agree-
2 ment.

3 “(C) The applicable numerical limitation referred to
4 in subparagraph (A) shall apply only to principal aliens
5 and not to the spouses or children of such aliens.”.

6 (c) NONIMMIGRANT PROFESSIONALS.—Section
7 212(t) (8 U.S.C. 1182(t)) is amended by striking “section
8 101(a)(15)(E)(iii)” each place that term appears and in-
9 serting “clause (iv) or (v) of section 101(a)(15)(E)”.

10 **SEC. 4403. E-VISA REFORM.**

11 (a) NONIMMIGRANT CATEGORY.—Section
12 101(a)(15)(E)(iii) (8 U.S.C. 1101(a)(15)(E)(iii)) is
13 amended by inserting “, or solely to perform services as
14 an employee and who has at least a high school education
15 or its equivalent, or has, within 5 years, at least 2 years
16 of work experience in an occupation which requires at least
17 2 years of training or experience if the alien is a national
18 of the Republic of Ireland,” after “Australia”.

19 (b) TEMPORARY ADMISSION.—Section 212(d)(3)(A)
20 (8 U.S.C. 1182(d)(3)(A)) is amended to read as follows:

21 “(A) Except as otherwise provided in this sub-
22 section—

23 “(i) an alien who is applying for a non-
24 immigrant visa and who the consular officer
25 knows or believes to be ineligible for such visa

1 under subsection (a) (other than subparagraphs
2 (A)(i)(I), (A)(ii), (A)(iii), (C), (E)(i), and
3 (E)(ii) of paragraph (3) of such subsection)—

4 “(I) after approval by the Secretary of
5 Homeland Security of a recommendation
6 by the Secretary of State or by the con-
7 sular officer that the alien be admitted
8 temporarily despite the alien’s inadmis-
9 sibility, may be granted such a visa and
10 may be admitted into the United States
11 temporarily as a nonimmigrant, in the dis-
12 cretion of the Secretary of Homeland Secu-
13 rity; or

14 “(II) absent such recommendation
15 and approval, be granted a nonimmigrant
16 visa pursuant to section 101(a)(15)(E) if
17 such ineligibility is based solely on conduct
18 in violation of paragraph (6), (7), or (9) of
19 section 212(a) that occurred before the
20 date of the enactment of the Border Secu-
21 rity, Economic Opportunity, and Immigra-
22 tion Modernization Act; and

23 “(ii) an alien who is inadmissible under
24 subsection (a) (other than subparagraphs
25 (A)(i)(I), (A)(ii), (A)(iii), (C), (E)(i), and

1 (E)(ii) of paragraph (3) of such subsection), is
2 in possession of appropriate documents or was
3 granted a waiver from such document require-
4 ment, and is seeking admission, may be admit-
5 ted into the United States temporarily as a
6 nonimmigrant, in the discretion of the Sec-
7 retary of Homeland Security, who shall pre-
8 scribe conditions, including exaction of such
9 bonds as may be necessary, to control and regu-
10 late the admission and return of inadmissible
11 aliens applying for temporary admission under
12 this paragraph.”.

13 (c) NUMERICAL LIMITATION.—Section
14 214(g)(11)(B) (8 U.S.C. 1184(g)(11)(B)) is amended by
15 striking the period at the end and inserting “for each of
16 the nationalities identified under section
17 101(a)(15)(E)(iii).”.

18 **SEC. 4404. OTHER CHANGES TO NONIMMIGRANT VISAS.**

19 (a) PORTABILITY.—Paragraphs (1) and (2) of sec-
20 tion 214(n) (8 U.S.C. 1184(n)) are amended to read as
21 follows:

22 “(1) A nonimmigrant alien described in paragraph
23 (2) who was previously issued a visa or otherwise provided
24 nonimmigrant status under section 101(a)(15)(H)(i)(b) or
25 101(a)(15)(O)(i) is authorized to accept new employment

1 pursuant to such section upon the filing by the prospective
2 employer of a new petition on behalf of such nonimmigrant
3 as provided under subsection (a). Employment authoriza-
4 tion shall continue for such alien until the new petition
5 is adjudicated. If the new petition is denied, such author-
6 ization shall cease.

7 “(2) A nonimmigrant alien described in this para-
8 graph is a nonimmigrant alien—

9 “(A) who has been lawfully admitted into the
10 United States;

11 “(B) on whose behalf an employer has filed a
12 nonfrivolous petition for new employment before the
13 date of expiration of the period of stay authorized by
14 the Secretary of Homeland Security; and

15 “(C) who, subsequent to such lawful admission,
16 has not been employed without authorization in the
17 United States before the filing of such petition.”.

18 (b) WAIVER.—The undesignated material at the end
19 of section 214(c)(3) (8 U.S.C. 1184(c)(3)) is amended to
20 read as follows:

21 “The Secretary of Homeland Security shall provide by
22 regulation for the waiver of the consultation requirement
23 under subparagraph (A) in the case of aliens who have
24 been admitted as nonimmigrants under section
25 101(a)(15)(O)(i) because of extraordinary ability in the

1 arts or extraordinary achievement in motion picture or tel-
2 evision production and who seek readmission to perform
3 similar services within 3 years after the date of a consulta-
4 tion under such subparagraph provided that, in the case
5 of aliens admitted because of extraordinary achievement
6 in motion picture or television production, such waiver
7 shall apply only if the prior consultations by the appro-
8 priate union and management organization were favorable
9 or raised no objection to the approval of the petition. Not
10 later than 5 days after such a waiver is provided, the Sec-
11 retary shall forward a copy of the petition and all sup-
12 porting documentation to the national office of an appro-
13 priate labor organization. In the case of an alien seeking
14 entry for a motion picture or television production (i) any
15 opinion under the previous sentence shall only be advisory;
16 (ii) any such opinion that recommends denial must be in
17 writing; (iii) in making the decision the Attorney General
18 shall consider the exigencies and scheduling of the produc-
19 tion; (iv) the Attorney General shall append to the decision
20 any such opinion; and (v) upon making the decision, the
21 Attorney General shall immediately provide a copy of the
22 decision to the consulting labor and management organi-
23 zations.”.

1 **SEC. 4405. TREATMENT OF NONIMMIGRANTS DURING AD-**
2 **JUDICATION OF APPLICATION.**

3 Section 214 (8 U.S.C. 1184), as amended by sections
4 3609 and 4233, is further amended by adding at the end
5 the following:

6 “(u) TREATMENT OF NONIMMIGRANTS DURING AD-
7 JUDICATION OF APPLICATION.—A nonimmigrant alien
8 granted employment authorization pursuant to sections
9 101(a)(15)(A), 101(a)(15)(E), 101(a)(15)(G),
10 101(a)(15)(H), 101(a)(15)(I), 101(a)(15)(J),
11 101(a)(15)(L), 101(a)(15)(O), 101(a)(15)(P),
12 101(a)(15)(Q), 101(a)(15)(R), 214(e), and such other sec-
13 tions as the Secretary of Homeland Security may by regu-
14 lations prescribe whose status has expired but who has,
15 or whose sponsoring employer or authorized agent has,
16 filed a timely application or petition for an extension of
17 such employment authorization and nonimmigrant status
18 as provided under subsection (a) is authorized to continue
19 employment with the same employer until the application
20 or petition is adjudicated. Such authorization shall be sub-
21 ject to the same conditions and limitations as the initial
22 grant of employment authorization.”.

1 **SEC. 4406. NONIMMIGRANT ELEMENTARY AND SECONDARY**
2 **SCHOOL STUDENTS.**

3 Section 214(m)(1)(B) (8 U.S.C. 1184(m)(1)(B)) is
4 amended striking “unless—” and all that follows through
5 “(ii)” and inserting “unless”.

6 **SEC. 4407. J-1 VISA EXCHANGE VISITOR PROGRAM FEE.**

7 Section 281 (8 U.S.C. 1351), as amended by section
8 4105, is further amended by adding at the end the fol-
9 lowing:

10 “(e) J-1 VISA EXCHANGE VISITOR PROGRAM FEE.—
11 In addition to the fees authorized under subsection (a),
12 the Secretary of State shall collect, from employers, a
13 \$500 fee for each nonimmigrant for whom the employer
14 submits a petition under the exchange visitor program de-
15 scribed in section 101(a)(15)(J). Fees collected under this
16 subsection shall be deposited into the Comprehensive Im-
17 migration Reform Trust Fund established under section
18 6(a)(1) of the Border Security, Economic Opportunity,
19 and Immigration Modernization Act.”.

20 **SEC. 4408. F-1 VISA FEE.**

21 Section 281 (8 U.S.C. 1351), as amended by sections
22 4105 and 4407, is further amended by adding at the end
23 the following:

24 “(f) F-1 VISA FEE.—

25 “(1) IN GENERAL.—In addition to the fees au-
26 thorized under subsection (a), the Secretary of

1 Homeland Security shall collect a \$100 fee from
2 each nonimmigrant admitted under section
3 101(a)(15)(F)(i). Fees collected under this sub-
4 section shall be deposited into the Comprehensive
5 Immigration Reform Trust Fund established under
6 section 6(a)(1) of the Border Security, Economic
7 Opportunity, and Immigration Modernization Act.

8 “(2) RULEMAKING.—The Secretary of Home-
9 land Security, in conjunction with the Secretary of
10 State, shall promulgate regulations to ensure that—

11 “(A) the fee authorized under paragraph
12 (1) is paid on behalf of all J–1 nonimmigrants
13 seeking entry into the United States;

14 “(B) a fee related to the hiring of a J–1
15 nonimmigrant is not deducted from the wages
16 or other compensation paid to the J–1 non-
17 immigrant; and

18 “(C) not more than 1 fee is collected per
19 J–1 nonimmigrant.”.

20 **Subtitle E—JOLT Act**

21 **SEC. 4501. SHORT TITLES.**

22 This subtitle may be cited as the “Jobs Originated
23 through Launching Travel Act of 2013” or the “JOLT
24 Act of 2013”.

1 **SEC. 4502. PREMIUM PROCESSING.**

2 Section 221 (8 U.S.C. 1201) is amended by inserting
3 at the end the following:

4 “(j) PREMIUM PROCESSING.—

5 “(1) PILOT PROCESSING SERVICE.—Recogn-
6 nizing that the best solution for expedited processing
7 is low interview wait times for all applicants, the
8 Secretary of State shall nevertheless establish, on a
9 limited, pilot basis only, a fee-based premium proc-
10 essing service to expedite interview appointments. In
11 establishing a pilot processing service, the Secretary
12 may—

13 “(A) determine the consular posts at which
14 the pilot service will be available;

15 “(B) establish the duration of the pilot
16 service;

17 “(C) define the terms and conditions of the
18 pilot service, with the goal of expediting visa
19 appointments and the interview process for
20 those electing to pay said fee for the service;
21 and

22 “(D) resources permitting, during the pilot
23 service, consider the addition of consulates in
24 locations advantageous to foreign policy objec-
25 tives or in highly populated locales.

26 “(2) FEES.—

1 “(A) AUTHORITY TO COLLECT.—The Sec-
2 retary of State is authorized to collect, and set
3 the amount of, a fee imposed for the premium
4 processing service. The Secretary of State shall
5 set the fee based on all relevant considerations
6 including, the cost of expedited service.

7 “(B) USE OF FEES.—Fees collected under
8 the authority of subparagraph (A) shall be de-
9 posited as an offsetting collection to any De-
10 partment of State appropriation, to recover the
11 costs of providing consular services. Such fees
12 shall remain available for obligation until ex-
13 pended.

14 “(C) RELATIONSHIP TO OTHER FEES.—
15 Such fee is in addition to any existing fee cur-
16 rently being collected by the Department of
17 State.

18 “(D) NONREFUNDABLE.—Such fee will be
19 nonrefundable to the applicant.

20 “(3) DESCRIPTION OF PREMIUM PROC-
21 ESSING.—Premium processing pertains solely to the
22 expedited scheduling of a visa interview. Utilizing
23 the premium processing service for an expedited
24 interview appointment does not establish the appli-
25 cant’s eligibility for a visa. The Secretary of State

1 shall, if possible, inform applicants utilizing the pre-
2 mium processing of potential delays in visa issuance
3 due to additional screening requirements, including
4 necessary security-related checks and clearances.

5 “(4) REPORT TO CONGRESS.—

6 “(A) REQUIREMENT FOR REPORT.—Not
7 later than 18 months after the date of the en-
8 actment of the JOLT Act of 2013, the Sec-
9 retary of State shall submit to the appropriate
10 committees of Congress a report on the results
11 of the pilot service carried out under this sec-
12 tion.

13 “(B) APPROPRIATE COMMITTEES OF CON-
14 GRESS DEFINED.—In this paragraph, the term
15 ‘appropriate committees of Congress’ means—

16 “(i) the Committee on the Judiciary,
17 the Committee on Foreign Relations, and
18 the Committee on Appropriations of the
19 Senate; and

20 “(ii) the Committee on the Judiciary,
21 the Committee on Foreign Affairs, and the
22 Committee on Appropriations of the House
23 of Representatives.”.

1 **SEC. 4503. ENCOURAGING CANADIAN TOURISM TO THE**
2 **UNITED STATES.**

3 Section 214 (8 U.S.C. 1184), as amended by sections
4 3609, 4233, and 4405, is further amended by adding at
5 the end the following:

6 “(v) CANADIAN RETIREES.—

7 “(1) IN GENERAL.—The Secretary of Homeland
8 Security may admit as a visitor for pleasure as de-
9 scribed in section 101(a)(15)(B) any alien for a pe-
10 riod not to exceed 240 days, if the alien dem-
11 onstrates, to the satisfaction of the Secretary, that
12 the alien—

13 “(A) is a citizen of Canada;

14 “(B) is at least 55 years of age;

15 “(C) maintains a residence in Canada;

16 “(D) owns a residence in the United States
17 or has signed a rental agreement for accom-
18 modations in the United States for the duration
19 of the alien’s stay in the United States;

20 “(E) is not inadmissible under section 212;

21 “(F) is not described in any ground of de-
22 portability under section 237;

23 “(G) will not engage in employment or
24 labor for hire in the United States; and

25 “(H) will not seek any form of assistance
26 or benefit described in section 403(a) of the

1 Personal Responsibility and Work Opportunity
2 Reconciliation Act of 1996 (8 U.S.C. 1613(a)).

3 “(2) SPOUSE.—The spouse of an alien de-
4 scribed in paragraph (1) may be admitted under the
5 same terms as the principal alien if the spouse satis-
6 fies the requirements of paragraph (1), other than
7 subparagraphs (B) and (D).

8 “(3) IMMIGRANT INTENT.—In determining eli-
9 gibility for admission under this subsection, mainte-
10 nance of a residence in the United States shall not
11 be considered evidence of intent by the alien to
12 abandon the alien’s residence in Canada.

13 “(4) PERIOD OF ADMISSION.—During any sin-
14 gle 365-day period, an alien may be admitted as de-
15 scribed in section 101(a)(15)(B) pursuant to this
16 subsection for a period not to exceed 240 days, be-
17 ginning on the date of admission. Unless an exten-
18 sion is approved by the Secretary, periods of time
19 spent outside the United States during such 240-day
20 period shall not toll the expiration of such 240-day
21 period.”.

22 **SEC. 4504. RETIREE VISA.**

23 (a) NONIMMIGRANT STATUS.—Section 101(a)(15),
24 as amended, is further amended by inserting after sub-
25 paragraph (X) the following:

1 “(Y) subject to section 214(w), an alien
2 who, after the date of the enactment of the
3 JOLT Act of 2013—

4 “(i)(I) uses at least \$500,000 in cash
5 to purchase 1 or more residences in the
6 United States, which each sold for more
7 than 100 percent of the most recent ap-
8 praised value of such residence, as deter-
9 mined by the property assessor in the city
10 or county in which the residence is located;

11 “(II) maintains ownership of residen-
12 tial property in the United States worth at
13 least \$500,000 during the entire period the
14 alien remains in the United States as a
15 nonimmigrant described in this subpara-
16 graph; and

17 “(III) resides for more than 180 days
18 per year in a residence in the United
19 States that is worth at least \$250,000; and

20 “(ii) the alien spouse and children of
21 the alien described in clause (i) if accom-
22 panying or following to join the alien.”.

23 (b) VISA APPLICATION PROCEDURES.—Section 214
24 (8 U.S.C. 1184), as amended by sections 3609, 4233,

1 4405, and 4503, is further amended by adding at the end
2 the following:

3 “(w) VISAS OF NONIMMIGRANTS DESCRIBED IN SEC-
4 TION 101(a)(15)(Y).—

5 “(1) The Secretary of Homeland Security shall
6 authorize the issuance of a nonimmigrant visa to
7 any alien described in section 101(a)(15)(Y) who
8 submits a petition to the Secretary that—

9 “(A) demonstrates, to the satisfaction of
10 the Secretary, that the alien—

11 “(i) has purchased a residence in the
12 United States that meets the criteria set
13 forth in section 101(a)(15)(Y)(i);

14 “(ii) is at least 55 years of age;

15 “(iii) possesses health insurance cov-
16 erage;

17 “(iv) is not inadmissible under section
18 212; and

19 “(v) will comply with the terms set
20 forth in paragraph (2); and

21 “(B) includes payment of a fee in an
22 amount equal to \$1,000.

23 “(2) An alien who is issued a visa under this
24 subsection—

1 “(A) shall reside in the United States at a
2 residence that meets the criteria set forth in
3 section 101(a)(15)(Y)(i) for more than 180
4 days per year;

5 “(B) is not authorized to engage in em-
6 ployment in the United States, except for em-
7 ployment that is directly related to the manage-
8 ment of the residential property described in
9 section 101(Y)(i)(II);

10 “(C) is not eligible for any form of assist-
11 ance or benefit described in section 403(a) of
12 the Personal Responsibility and Work Oppor-
13 tunity Reconciliation Act of 1996 (8 U.S.C.
14 1613(a)); and

15 “(D) may renew such visa every 3 years
16 under the same terms and conditions.”.

17 (c) USE OF FEE.—Fees collected under section
18 214(w)(1)(B) of the Immigration and Nationality Act, as
19 added by subsection (b), shall be deposited in the Com-
20 prehensive Immigration Reform Trust Fund established
21 under section 6(a)(1).

1 **SEC. 4505. INCENTIVES FOR FOREIGN VISITORS VISITING**
2 **THE UNITED STATES DURING LOW PEAK SEA-**
3 **SONS.**

4 The Secretary of State shall make publically avail-
5 able, on a monthly basis, historical data, for the previous
6 2 years, regarding the availability of visa appointments for
7 each visa processing post, to allow applicants to identify
8 periods of low demand, when wait times tend to be lower.

9 **SEC. 4506. VISA WAIVER PROGRAM ENHANCED SECURITY**
10 **AND REFORM.**

11 (a) DEFINITIONS.—Section 217(c)(1) (8 U.S.C.
12 1187(c)(1)) is amended to read as follows:

13 “(1) AUTHORITY TO DESIGNATE; DEFINI-
14 TIONS.—

15 “(A) AUTHORITY TO DESIGNATE.—The
16 Secretary of Homeland Security, in consultation
17 with the Secretary of State, may designate any
18 country as a program country if that country
19 meets the requirements under paragraph (2).

20 “(B) DEFINITIONS.—In this subsection:

21 “(i) APPROPRIATE CONGRESSIONAL
22 COMMITTEES.—The term ‘appropriate con-
23 gressional committees’ means—

24 “(I) the Committee on Foreign
25 Relations, the Committee on Home-
26 land Security and Governmental Af-

1 fairs, and the Committee on the Judi-
2 ciary of the Senate; and

3 “(II) the Committee on Foreign
4 Affairs, the Committee on Homeland
5 Security, and the Committee on the
6 Judiciary of the House of Representa-
7 tives.

8 “(ii) OVERSTAY RATE.—

9 “(I) INITIAL DESIGNATION.—The
10 term ‘overstay rate’ means, with re-
11 spect to a country being considered
12 for designation in the program, the
13 ratio of—

14 “(aa) the number of nation-
15 als of that country who were ad-
16 mitted to the United States on
17 the basis of a nonimmigrant visa
18 under section 101(a)(15)(B)
19 whose periods of authorized stay
20 ended during a fiscal year but
21 who remained unlawfully in the
22 United States beyond such peri-
23 ods; to

24 “(bb) the number of nation-
25 als of that country who were ad-

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1 mitted to the United States on
2 the basis of a nonimmigrant visa
3 under section 101(a)(15)(B)
4 whose periods of authorized stay
5 ended during that fiscal year.

6 “(II) CONTINUING DESIGNA-
7 TION.—The term ‘overstay rate’
8 means, for each fiscal year after ini-
9 tial designation under this section
10 with respect to a country, the ratio
11 of—

12 “(aa) the number of nation-
13 als of that country who were ad-
14 mitted to the United States
15 under this section or on the basis
16 of a nonimmigrant visa under
17 section 101(a)(15)(B) whose pe-
18 riods of authorized stay ended
19 during a fiscal year but who re-
20 mained unlawfully in the United
21 States beyond such periods; to

22 “(bb) the number of nation-
23 als of that country who were ad-
24 mitted to the United States
25 under this section or on the basis

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1 of a nonimmigrant visa under
2 section 101(a)(15)(B) whose pe-
3 riods of authorized stay ended
4 during that fiscal year.

5 “(III) COMPUTATION OF OVER-
6 STAY RATE.—In determining the over-
7 stay rate for a country, the Secretary
8 of Homeland Security may utilize in-
9 formation from any available data-
10 bases to ensure the accuracy of such
11 rate.

12 “(iii) PROGRAM COUNTRY.—The term
13 ‘program country’ means a country des-
14 ignated as a program country under sub-
15 paragraph (A).”.

16 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
17 Section 217 (8 U.S.C. 1187) is amended—

18 (1) by striking “Attorney General” each place
19 the term appears (except in subsection (c)(11)(B))
20 and inserting “Secretary of Homeland Security”;
21 and

22 (2) in subsection (c)—

23 (A) in paragraph (2)(C)(iii), by striking
24 “Committee on the Judiciary and the Com-
25 mittee on International Relations of the House

1 of Representatives and the Committee on the
2 Judiciary and the Committee on Foreign Rela-
3 tions of the Senate” and inserting “appropriate
4 congressional committees”;

5 (B) in paragraph (5)(A)(i)(III), by striking
6 “Committee on the Judiciary, the Committee on
7 Foreign Affairs, and the Committee on Home-
8 land Security, of the House of Representatives
9 and the Committee on the Judiciary, the Com-
10 mittee on Foreign Relations, and the Com-
11 mittee on Homeland Security and Govern-
12 mental Affairs of the Senate” and inserting
13 “appropriate congressional committees”; and

14 (C) in paragraph (7), by striking subpara-
15 graph (E).

16 (c) DESIGNATION OF PROGRAM COUNTRIES BASED
17 ON OVERSTAY RATES.—

18 (1) IN GENERAL.—Section 217(c)(2)(A) (8
19 U.S.C. 1187(c)(2)(A)) is amended to read as fol-
20 lows:

21 “(A) GENERAL NUMERICAL LIMITA-
22 TIONS.—

23 “(i) LOW NONIMMIGRANT VISA RE-
24 FUSAL RATE.—The percentage of nationals
25 of that country refused nonimmigrant visas

1 under section 101(a)(15)(B) during the
2 previous full fiscal year was not more than
3 3 percent of the total number of nationals
4 of that country who were granted or re-
5 fused nonimmigrant visas under such sec-
6 tion during such year.

7 “(ii) LOW NONIMMIGRANT OVERSTAY
8 RATE.—The overstay rate for that country
9 was not more than 3 percent during the
10 previous fiscal year.”.

11 (2) QUALIFICATION CRITERIA.—Section
12 217(c)(3) (8 U.S.C. 1187(c)(3)) is amended to read
13 as follows:

14 “(3) QUALIFICATION CRITERIA.—After designa-
15 tion as a program country under section 217(c)(2),
16 a country may not continue to be designated as a
17 program country unless the Secretary of Homeland
18 Security, in consultation with the Secretary of State,
19 determines, pursuant to the requirements under
20 paragraph (5), that the designation will be contin-
21 ued.”.

22 (3) INITIAL PERIOD.—Section 217(c) (8 U.S.C.
23 1187(c)) is amended by striking paragraph (4).

1 (4) CONTINUING DESIGNATION.—Section
2 217(c)(5)(A)(i)(II) (8 U.S.C. 1187(c)(5)(A)(i)(II)) is
3 amended to read as follows:

4 “(II) shall determine,
5 based upon the evaluation in
6 subclause (I), whether any
7 such designation under sub-
8 section (d) or (f), or proba-
9 tion under subsection (f),
10 ought to be continued or ter-
11 minated;”.

12 (5) COMPUTATION OF VISA REFUSAL RATES;
13 JUDICIAL REVIEW.—Section 217(c)(6) (8 U.S.C.
14 1187(c)(6)) is amended to read as follows:

15 “(6) COMPUTATION OF VISA REFUSAL RATES
16 AND JUDICIAL REVIEW.—

17 “(A) COMPUTATION OF VISA REFUSAL
18 RATES.—For purposes of determining the eligi-
19 bility of a country to be designated as a pro-
20 gram country, the calculation of visa refusal
21 rates shall not include any visa refusals which
22 incorporate any procedures based on, or are
23 otherwise based on, race, sex, or disability, un-
24 less otherwise specifically authorized by law or
25 regulation.

1 “(B) JUDICIAL REVIEW.—No court shall
2 have jurisdiction under this section to review
3 any visa refusal, the Secretary of State’s com-
4 putation of a visa refusal rate, the Secretary of
5 Homeland Security’s computation of an over-
6 stay rate, or the designation or nondesignation
7 of a country as a program country.”.

8 (6) VISA WAIVER INFORMATION.—Section
9 217(c)(7) (8 U.S.C. 1187(c)(7)), as amended by
10 subsection (b)(2)(C), is further amended—

11 (A) by striking subparagraphs (B) through
12 (D); and

13 (B) by striking “WAIVER INFORMATION.—
14 ” and all that follows through “In refusing”
15 and inserting “WAIVER INFORMATION.—In re-
16 fusing”.

17 (7) WAIVER AUTHORITY.—Section 217(c)(8) (8
18 U.S.C. 1187(c)(8)) is amended to read as follows:

19 “(8) WAIVER AUTHORITY.—The Secretary of
20 Homeland Security, in consultation with the Sec-
21 retary of State, may waive the application of para-
22 graph (2)(A)(i) for a country if—

23 “(A) the country meets all other require-
24 ments of paragraph (2);

1 “(B) the Secretary of Homeland Security
2 determines that the totality of the country’s se-
3 curity risk mitigation measures provide assur-
4 ance that the country’s participation in the pro-
5 gram would not compromise the law enforce-
6 ment, security interests, or enforcement of the
7 immigration laws of the United States;

8 “(C) there has been a general downward
9 trend in the percentage of nationals of the
10 country refused nonimmigrant visas under sec-
11 tion 101(a)(15)(B);

12 “(D) the country consistently cooperated
13 with the Government of the United States on
14 counterterrorism initiatives, information shar-
15 ing, preventing terrorist travel, and extradition
16 to the United States of individuals (including
17 the country’s own nationals) who commit
18 crimes that violate United States law before the
19 date of its designation as a program country,
20 and the Secretary of Homeland Security and
21 the Secretary of State assess that such coopera-
22 tion is likely to continue; and

23 “(E) the percentage of nationals of the
24 country refused a nonimmigrant visa under sec-
25 tion 101(a)(15)(B) during the previous full fis-

1 cal year was not more than 10 percent of the
2 total number of nationals of that country who
3 were granted or refused such nonimmigrant
4 visas.”.

5 (d) TERMINATION OF DESIGNATION; PROBATION.—
6 Section 217(f) (8 U.S.C. 1187(f)) is amended to read as
7 follows:

8 “(f) TERMINATION OF DESIGNATION; PROBATION.—
9 “(1) DEFINITIONS.—In this subsection:

10 “(A) PROBATIONARY PERIOD.—The term
11 ‘probationary period’ means the fiscal year in
12 which a probationary country is placed in pro-
13 bationary status under this subsection.

14 “(B) PROGRAM COUNTRY.—The term ‘pro-
15 gram country’ has the meaning given that term
16 in subsection (c)(1)(B).

17 “(2) DETERMINATION, NOTICE, AND INITIAL
18 PROBATIONARY PERIOD.—

19 “(A) DETERMINATION OF PROBATIONARY
20 STATUS AND NOTICE OF NONCOMPLIANCE.—As
21 part of each program country’s periodic evalua-
22 tion required by subsection (c)(5)(A), the Sec-
23 retary of Homeland Security shall determine
24 whether a program country is in compliance

1 with the program requirements under subpara-
2 graphs (A)(ii) through (F) of subsection (c)(2).

3 “(B) INITIAL PROBATIONARY PERIOD.—If
4 the Secretary of Homeland Security determines
5 that a program country is not in compliance
6 with the program requirements under subpara-
7 graphs (A)(ii) through (F) of subsection (c)(2),
8 the Secretary of Homeland Security shall place
9 the program country in probationary status for
10 the fiscal year following the fiscal year in which
11 the periodic evaluation is completed.

12 “(3) ACTIONS AT THE END OF THE INITIAL
13 PROBATIONARY PERIOD.—At the end of the initial
14 probationary period of a country under paragraph
15 (2)(B), the Secretary of Homeland Security shall
16 take 1 of the following actions:

17 “(A) COMPLIANCE DURING INITIAL PROBA-
18 TIONARY PERIOD.—If the Secretary determines
19 that all instances of noncompliance with the
20 program requirements under subparagraphs
21 (A)(ii) through (F) of subsection (c)(2) that
22 were identified in the latest periodic evaluation
23 have been remedied by the end of the initial
24 probationary period, the Secretary shall end the
25 country’s probationary period.

1 “(B) NONCOMPLIANCE DURING INITIAL
2 PROBATIONARY PERIOD.—If the Secretary de-
3 termines that any instance of noncompliance
4 with the program requirements under subpara-
5 graphs (A)(ii) through (F) of subsection (c)(2)
6 that were identified in the latest periodic eval-
7 uation has not been remedied by the end of the
8 initial probationary period—

9 “(i) the Secretary may terminate the
10 country’s participation in the program; or

11 “(ii) on an annual basis, the Secretary
12 may continue the country’s probationary
13 status if the Secretary, in consultation
14 with the Secretary of State, determines
15 that the country’s continued participation
16 in the program is in the national interest
17 of the United States.

18 “(4) ACTIONS AT THE END OF ADDITIONAL
19 PROBATIONARY PERIODS.—At the end of all proba-
20 tionary periods granted to a country pursuant to
21 paragraph (3)(B)(ii), the Secretary shall take 1 of
22 the following actions:

23 “(A) COMPLIANCE DURING ADDITIONAL
24 PERIOD.—The Secretary shall end the country’s
25 probationary status if the Secretary determines

1 during the latest periodic evaluation required by
2 subsection (c)(5)(A) that the country is in com-
3 pliance with the program requirements under
4 subparagraphs (A)(ii) through (F) of subsection
5 (c)(2).

6 “(B) NONCOMPLIANCE DURING ADDI-
7 TIONAL PERIODS.—The Secretary shall termi-
8 nate the country’s participation in the program
9 if the Secretary determines during the latest
10 periodic evaluation required by subsection
11 (c)(5)(A) that the program country continues to
12 be in noncompliance with the program require-
13 ments under subparagraphs (A)(ii) through (F)
14 of subsection (c)(2).

15 “(5) EFFECTIVE DATE.—The termination of a
16 country’s participation in the program under para-
17 graph (3)(B) or (4)(B) shall take effect on the first
18 day of the first fiscal year following the fiscal year
19 in which the Secretary determines that such partici-
20 pation shall be terminated. Until such date, nation-
21 als of the country shall remain eligible for a waiver
22 under subsection (a).

23 “(6) TREATMENT OF NATIONALS AFTER TERMI-
24 NATION.—For purposes of this subsection and sub-
25 section (d)—

1 “(A) nationals of a country whose designa-
2 tion is terminated under paragraph (3) or (4)
3 shall remain eligible for a waiver under sub-
4 section (a) until the effective date of such ter-
5 mination; and

6 “(B) a waiver under this section that is
7 provided to such a national for a period de-
8 scribed in subsection (a)(1) shall not, by such
9 termination, be deemed to have been rescinded
10 or otherwise rendered invalid, if the waiver is
11 granted prior to such termination.

12 “(7) CONSULTATIVE ROLE OF THE SECRETARY
13 OF STATE.—In this subsection, references to sub-
14 paragraphs (A)(ii) through (F) of subsection (c)(2)
15 and subsection (c)(5)(A) carry with them the con-
16 sultative role of the Secretary of State as provided
17 in those provisions.”.

18 (e) REVIEW OF OVERSTAY TRACKING METHOD-
19 OLOGY.—Not later than 180 days after the date of the
20 enactment of this Act, the Comptroller General of the
21 United States shall conduct a review of the methods used
22 by the Secretary—

23 (1) to track aliens entering and exiting the
24 United States; and

1 (2) to detect any such alien who stays longer
2 than such alien's period of authorized admission.

3 (f) EVALUATION OF ELECTRONIC SYSTEM FOR
4 TRAVEL AUTHORIZATION.—Not later than 90 days after
5 the date of the enactment of this Act, the Secretary shall
6 submit to Congress—

7 (1) an evaluation of the security risks of aliens
8 who enter the United States without an approved
9 Electronic System for Travel Authorization
10 verification; and

11 (2) a description of any improvements needed
12 to minimize the number of aliens who enter the
13 United States without the verification described in
14 paragraph (1).

15 (g) SENSE OF CONGRESS ON PRIORITY FOR REVIEW
16 OF PROGRAM COUNTRIES.—It is the sense of Congress
17 that the Secretary, in the process of conducting evalua-
18 tions of countries participating in the visa waiver program
19 under section 217 of the Immigration and Nationality Act
20 (8 U.S.C. 1187), should prioritize the reviews of countries
21 in which circumstances indicate that such a review is nec-
22 essary or desirable.

1 **SEC. 4507. EXPEDITING ENTRY FOR PRIORITY VISITORS.**

2 Section 7208(k)(4) of the Intelligence Reform and
3 Terrorism Prevention Act of 2004 (8 U.S.C. 1365b(k)(4))
4 is amended to read as follows:

5 “(4) EXPEDITING ENTRY FOR PRIORITY VISI-
6 TORS.—

7 “(A) IN GENERAL.—The Secretary of
8 Homeland Security may expand the enrollment
9 across registered traveler programs to include
10 eligible individuals employed by international
11 organizations, selected by the Secretary, which
12 maintain strong working relationships with the
13 United States.

14 “(B) REQUIREMENTS.—An individual may
15 not be enrolled in a registered traveler program
16 unless—

17 “(i) the individual is sponsored by an
18 international organization selected by the
19 Secretary under subparagraph (A); and

20 “(ii) the government that issued the
21 passport that the individual is using has
22 entered into a Trusted Traveler Arrange-
23 ment with the Department of Homeland
24 Security to participate in a registered trav-
25 eler program.

1 “(C) SECURITY REQUIREMENTS.—An indi-
2 vidual may not be enrolled in a registered trav-
3 eler program unless the individual has success-
4 fully completed all applicable security require-
5 ments established by the Secretary, including
6 cooperation from the applicable foreign govern-
7 ment, to ensure that the individual does not
8 pose a risk to the United States.

9 “(D) DISCRETION.—Except as provided in
10 subparagraph (E), the Secretary shall retain
11 unreviewable discretion to offer or revoke en-
12 rollment in a registered traveler program to any
13 individual.

14 “(E) INELIGIBLE TRAVELERS.—An indi-
15 vidual who is a citizen of a state sponsor of ter-
16 rorism (as defined in section 301(13) of the
17 Comprehensive Iran Sanctions, Accountability,
18 and Divestment Act of 2010 (22 U.S.C.
19 8541(13)) may not be enrolled in a registered
20 traveler program.”.

21 **SEC. 4508. VISA PROCESSING.**

22 (a) IN GENERAL.—Notwithstanding any other provi-
23 sion of law and not later than 90 days after the date of
24 the enactment of this Act, the Secretary of State shall—

1 (1) require United States diplomatic and con-
2 sular missions—

3 (A) to conduct visa interviews for non-
4 immigrant visa applications determined to re-
5 quire a consular interview in an expeditious
6 manner, consistent with national security re-
7 quirements, and in recognition of resource allo-
8 cation considerations, such as the need to en-
9 sure provision of consular services to citizens of
10 the United States;

11 (B) to set a goal of interviewing 80 percent
12 of all nonimmigrant visa applicants, worldwide,
13 within 3 weeks of receipt of application, subject
14 to the conditions outlined in subparagraph (A);
15 and

16 (C) to explore expanding visa processing
17 capacity in China and Brazil, with the goal of
18 maintaining interview wait times under 15 work
19 days on a consistent, year-round basis, recog-
20 nizing that demand can spike suddenly and un-
21 predictably and that the first priority of United
22 States missions abroad is the protection of citi-
23 zens of the United States; and

1 (2) submit to the appropriate committees of
2 Congress a detailed strategic plan that describes the
3 resources needed to carry out paragraph (1)(A).

4 (b) APPROPRIATE COMMITTEES OF CONGRESS.—In
5 this section, the term “appropriate committees of Con-
6 gress” means—

7 (1) the Committee on the Judiciary, the Com-
8 mittee on Foreign Relations, and the Committee on
9 Appropriations of the Senate; and

10 (2) the Committee on the Judiciary, the Com-
11 mittee on Foreign Affairs, and the Committee on
12 Appropriations of the House of Representatives.

13 (c) SEMI-ANNUAL REPORT.—Not later than 30 days
14 after the end of the first 6 months after the implementa-
15 tion of subsection (a), and not later than 30 days after
16 the end of each subsequent quarter, the Secretary of State
17 shall submit to the appropriate committees of Congress
18 a report that provides—

19 (1) data substantiating the efforts of the Sec-
20 retary of State to meet the requirements and goals
21 described in subsection (a);

22 (2) any factors that have negatively impacted
23 the efforts of the Secretary to meet such require-
24 ments and goals; and

1 (3) any measures that the Secretary plans to
2 implement to meet such requirements and goals.

3 (d) SAVINGS PROVISION.—

4 (1) IN GENERAL.—Nothing in subsection (a)
5 may be construed to affect a consular officer’s au-
6 thority—

7 (A) to deny a visa application under sec-
8 tion 221(g) of the Immigration and Nationality
9 Act (8 U.S.C. 1201(g)); or

10 (B) to initiate any necessary or appro-
11 priate security-related check or clearance.

12 (2) SECURITY CHECKS.—The completion of a
13 security-related check or clearance shall not be sub-
14 ject to the time limits set out in subsection (a).

15 **SEC. 4509. B VISA FEE.**

16 Section 281 (8 U.S.C. 1351), as amended by sections
17 4105, 4407, and 4408, is further amended by adding at
18 the end the following:

19 “(g) B VISA FEE.—In addition to the fees authorized
20 under subsection (a), the Secretary of Homeland Security
21 shall collect a \$5 fee from each nonimmigrant admitted
22 under section 101(a)(15)(B). Fees collected under this
23 subsection shall be deposited into the Comprehensive Im-
24 migration Reform Trust Fund established under section

1 6(a)(1) of the Border Security, Economic Opportunity,
2 and Immigration Modernization Act.”.

3 **Subtitle F—Reforms to the H-2B**
4 **Visa Program**

5 **SEC. 4601. EXTENSION OF RETURNING WORKER EXEMP-**
6 **TION TO H-2B NUMERICAL LIMITATION.**

7 (a) IN GENERAL.—

8 (1) IN GENERAL.—Subparagraph (A) of para-
9 graph (10) of section 214(g) (8 U.S.C. 1184(g)), as
10 redesignated by section 4101(a)(3), is amended by
11 striking “fiscal year 2004, 2005, or 2006 shall not
12 again be counted toward such limitation during fis-
13 cal year 2007.” and inserting “fiscal year 2013 shall
14 not again be counted toward such limitation during
15 fiscal years 2014 through 2018.”.

16 (2) EFFECTIVE PERIOD.—The amendment
17 made by paragraph (1) shall be effective during the
18 period beginning on the effective date described in
19 subsection (c) and ending on September 30, 2018.

20 (b) TECHNICAL AND CLARIFYING AMENDMENTS.—

21 (1) NONIMMIGRANT STATUS.—Section
22 101(a)(15)(P) (8 U.S.C. 1101(a)(15)(P)) is amend-
23 ed—

24 (A) in clause (iii), by striking “or” at the
25 end;

1 (B) in clause (iv), by striking “clause (i),
2 (ii), or (iii),” and inserting “clause (i), (ii), (iii),
3 or (iv)”;

4 (C) by redesignating clause (iv) as clause
5 (v); and

6 (D) by inserting after clause (iii) the fol-
7 lowing:

8 “(iv) is a ski instructor, who has been
9 certified as a level I, II, or III ski and
10 snowboard instructor by the Professional
11 Ski Instructors of America or the Amer-
12 ican Association of Snowboard Instructors,
13 or received an equivalent certification in
14 the alien’s country of origin, and is seeking
15 to enter the United States temporarily to
16 perform instructing services; or”.

17 (2) AUTHORIZED PERIOD OF STAY; NUMERICAL
18 LIMITATION.—Section 214(a)(2)(B) (8 U.S.C.
19 1184(a)(2)(B)) is amended in the second sentence—

20 (A) by inserting “or ski instructors” after
21 “athletes”; and

22 (B) by inserting “or ski instructor” after
23 “athlete”.

24 (3) CONSTRUCTION.—Nothing in the amend-
25 ments made by this subsection may be construed as

1 preventing an alien who is a ski instructor from ob-
2 taining nonimmigrant status under section
3 101(a)(15)(H)(ii)(b) of the Immigration and Nation-
4 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) if such
5 alien is otherwise qualified for such status.

6 (c) EFFECTIVE DATE.—The amendment made by
7 subsection (a) shall take effect as if enacted on January
8 1, 2013.

9 **SEC. 4602. OTHER REQUIREMENTS FOR H-2B EMPLOYERS.**

10 (a) IN GENERAL.—Section 214 (8 U.S.C. 1184), as
11 amended by sections 3609, 4233, 4405, 4503, and 4504,
12 is further amended by adding at the end the following:

13 “(x) REQUIREMENTS FOR H-2B EMPLOYERS.—

14 “(1) H-2B NONIMMIGRANT DEFINED.—In this
15 subsection the term ‘H-2B nonimmigrant’ means an
16 alien admitted to the United States pursuant to sec-
17 tion 101(a)(15)(H)(ii)(B).

18 “(2) NON-DISPLACEMENT OF UNITED STATES
19 WORKERS.—An employer who seeks to employ an
20 H-2B nonimmigrant admitted in an occupational
21 classification shall certify and attest that the em-
22 ployer did not displace and will not displace a
23 United States worker employed by the employer in
24 the same metropolitan statistical area where such
25 nonimmigrant will be hired within the period begin-

1 ning 90 days before the start date and ending on the
2 end date for which the employer is seeking the serv-
3 ices of such nonimmigrant as specified on an appli-
4 cation for labor certification under this Act.

5 “(3) TRANSPORTATION COSTS.—The employer
6 shall pay the transportation costs, including reason-
7 able subsistence costs during the period of travel, for
8 an H-2B nonimmigrant hired by the employer—

9 “(A) from the place of recruitment to the
10 place of such nonimmigrant’s employment; and

11 “(B) from the place of employment to such
12 nonimmigrant’s place of permanent residence or
13 a subsequent worksite.

14 “(4) PAYMENT OF FEES.—A fee related to the
15 hiring of an H-2B nonimmigrant required to be paid
16 by an employer under this Act shall be paid by the
17 employer and may not be deducted from the wages
18 or other compensation paid to an H-2B non-
19 immigrant.

20 “(5) H-2B NONIMMIGRANT LABOR CERTIFI-
21 CATION APPLICATION FEE.—

22 “(A) IN GENERAL.—To recover costs of
23 carrying out labor certification activities under
24 the H-2B program, the Secretary of Labor shall
25 impose a \$500 fee on an employer that submits

1 an application for an employment certification
2 for aliens granted H-2B nonimmigrant status
3 to the Secretary of Labor under this subpara-
4 graph on or after the date that is 30 days after
5 the date of enactment of the Border Security,
6 Economic Opportunity, and Immigration Mod-
7 ernization Act.”.

8 “(B) USE OF FEES.—The fees collected
9 under subparagraph (A) shall be deposited in
10 the Comprehensive Immigration Reform Trust
11 Fund established under section 6 of the Border
12 Security, Economic Opportunity, and Immigra-
13 tion Modernization Act.”.

14 **SEC. 4603. EXECUTIVES AND MANAGERS.**

15 Section 214 (8 U.S.C. 1184) is amended—

16 (1) in subsection (a)(1), by adding at the end
17 the following: “Aliens admitted under section
18 101(a)(15) should include—

19 “(A) executives and managers employed by a
20 firm or corporation or other legal entity or an affil-
21 iate or subsidiary thereof who are principally sta-
22 tioned abroad and who seek to enter the United
23 States for periods of 90 days or less to oversee and
24 observe the United States operations of their related

1 companies, and establish strategic objectives when
2 needed; or

3 “(B) employees of multinational corporations
4 who enter the United States to observe the oper-
5 ations of a related United States company and par-
6 ticipate in select leadership and development train-
7 ing activities, whether or not the activity is part of
8 a formal or classroom training program for a period
9 not to exceed 180 days.

10 Nonimmigrant aliens admitted pursuant to section
11 101(a)(15) and engaged in the activities described in
12 the subparagraph (A) or (B) may not receive a sal-
13 ary from a United States source, except for inci-
14 dental expenses for meals, travel, lodging and other
15 basic services.”.

16 **SEC. 4604. HONORARIA.**

17 Section 212(q) (8 U.S.C. 1182(q)) is amended to
18 read as follows:

19 “(q)(1) Any alien admitted under section
20 101(a)(15)(B) may accept an honorarium payment and
21 associated incidental expenses, for a usual academic activ-
22 ity or activities (lasting not longer than 9 days at any sin-
23 gle institution), as defined by the Attorney General in con-
24 sultation with the Secretary of Education, or for a per-
25 formance, appearance and participation in United States

1 based programming, including scripted or unscripted pro-
2 gramming (with services not rendered for more than 60
3 days in a 6 month period) if the alien has received a letter
4 of invitation from the institution, organization, or media
5 outlet, such payment is offered by an institution, organiza-
6 tion, or media outlet described in paragraph (2) and is
7 made for services conducted for the benefit of that institu-
8 tion, entity or media outlet and if the alien has not accept-
9 ed such payment or expenses from more than 5 institu-
10 tions, organizations, or media outlets in the previous 6-
11 month period. Any alien who is admitted under section
12 101(a)(15)(B) or any other valid visa may perform serv-
13 ices under this section without reentering the United
14 States and without a letter of invitation, if the alien does
15 not receive any remuneration including an honorarium
16 payment or incidental expenses, but may receive prize
17 money.

18 “(2) An institution, organization, or media outlet de-
19 scribed in this paragraph—

20 “(A) an institution of higher education (as de-
21 fined in section 101(a) of the Higher Education Act
22 of 1965 (20 U.S.C. 1001(a))) or a related or affili-
23 ated nonprofit entity;

24 “(B) a nonprofit research organization or a
25 Governmental research organization; and

1 “(C) a broadcast network, cable entity, produc-
2 tion company, new media, internet and mobile based
3 companies, who create or distribute programming
4 content.”.

5 **SEC. 4605. NONIMMIGRANTS PARTICIPATING IN RELIEF OP-**
6 **ERATIONS.**

7 Section 214 (8 U.S.C. 1184), as amended by sections
8 3609, 4233, 4405, 4503, 4504, and 4602, is further
9 amended by adding at the end following:

10 “(y) NONIMMIGRANTS PARTICIPATING IN RELIEF
11 OPERATIONS.—

12 “(1) IN GENERAL.—An alien coming individ-
13 ually, or aliens coming as a group, to participate in
14 relief operations, including critical infrastructure re-
15 pairs or improvements, needed in response to a Fed-
16 eral or State declared emergency or disaster, may be
17 admitted to the United States pursuant to section
18 101(a)(15)(B) for a period of not more than 90 days
19 if each such alien has been employed in a foreign
20 country by 1 employer for not less than 1 year prior
21 to the date the alien is so admitted.

22 “(2) PROHIBITION ON INCOME FROM A UNITED
23 STATES SOURCE.—During a period of admission
24 pursuant to paragraph (1), an alien may not receive
25 income from a United States source, except for inci-

1 dental expenses for meals, travel, lodging, and other
2 basic services.”.

3 **SEC. 4606. NONIMMIGRANTS PERFORMING MAINTENANCE**
4 **ON COMMON CARRIERS.**

5 Section 214 (8 U.S.C. 1184), as amended by sections
6 3609, 4233, 4405, 4503, 4504, 4602, and 4603, is further
7 amended by adding at the end following:

8 “(z) NONIMMIGRANTS PERFORMING MAINTENANCE
9 ON COMMON CARRIER.—

10 “(1) IN GENERAL.—An alien coming individ-
11 ually, or aliens coming as a group, who possess spe-
12 cialized knowledge to perform maintenance or re-
13 pairs for common carriers, including to airlines,
14 cruise lines, and railways, if such maintenance or re-
15 pairs are occurring to equipment or machinery man-
16 ufactured outside of the United States and are need-
17 ed for purposes relating to life, health, and safety,
18 may be admitted to the United States pursuant to
19 section 101(a)(15)(B) for a period of not more than
20 90 days if each such alien has been employed in a
21 foreign country by 1 employer for not less than 1
22 year prior to the date the alien is so admitted.

23 “(2) PROHIBITION ON INCOME FROM A UNITED
24 STATES SOURCE.—During a period of admission
25 pursuant to paragraph (1), an alien may not receive

1 a income from a United States source, except for in-
2 cidental expenses for meals, travel, lodging, and
3 other basic services.

4 “(3) FEE.—

5 “(A) IN GENERAL.—An alien admitted
6 pursuant to paragraph (1) shall pay a fee of
7 \$500 in addition to in addition to any fee as-
8 sessed to cover the costs to process an applica-
9 tion under this subsection.

10 “(B) USE OF FEE.—The fees collected
11 under subparagraph (A) shall be deposited in
12 the Comprehensive Immigration Reform Trust
13 Fund established under section 6(a)(1) of the
14 Border Security, Economic Opportunity, and
15 Immigration Modernization Act.”.

16 **Subtitle G—W Nonimmigrant Visas**

17 **SEC. 4701. BUREAU OF IMMIGRATION AND LABOR MARKET** 18 **RESEARCH.**

19 (a) DEFINITIONS.—In this section:

20 (1) BUREAU.—Except as otherwise specifically
21 provided, the term “Bureau” means the Bureau of
22 Immigration and Labor Market Research established
23 under subsection (b).

24 (2) COMMISSIONER.—The term “Commis-
25 sioner” means the Commissioner of the Bureau.

1 (3) CONSTRUCTION OCCUPATION.—The term
2 “construction occupation” means an occupation clas-
3 sified by the Bureau of Labor Statistics as being
4 within the construction industry for the purposes of
5 publishing the Bureau’s workforce statistics.

6 (4) METROPOLITAN STATISTICAL AREA.—The
7 term “metropolitan statistical area” means a geo-
8 graphic area designated as a metropolitan statistical
9 area by the Director of the Office of Management
10 and Budget.

11 (5) SHORTAGE OCCUPATION.—The term “short-
12 age occupation” means an occupation that the Com-
13 missioner determines is experiencing a shortage of
14 labor—

15 (A) throughout the United States; or

16 (B) in a specific metropolitan statistical
17 area.

18 (6) W VISA PROGRAM.—The term “W Visa Pro-
19 gram” means the program for the admission of non-
20 immigrant aliens described in subparagraph (W)(i)
21 of section 101(a)(15) of the Immigration and Na-
22 tionality Act (8 U.S.C. 1101(a)(15)), as added by
23 section 4702.

24 (7) ZONE 1 OCCUPATION.—The term “zone 1
25 occupation” means an occupation that requires little

1 or no preparation and is classified as a zone 1 occu-
2 pation on—

3 (A) the Occupational Information Network
4 Database (O*NET) on the date of the enact-
5 ment of this Act; or

6 (B) such Database or a similar successor
7 database, as designated by the Secretary of
8 Labor, after the date of the enactment of this
9 Act.

10 (8) ZONE 2 OCCUPATION.—The term “zone 2
11 occupation” means an occupation that requires some
12 preparation and is classified as a zone 2 occupation
13 on—

14 (A) the Occupational Information Network
15 Database (O*NET) on the date of the enact-
16 ment of this Act; or

17 (B) such Database or a similar successor
18 database, as designated by the Secretary of
19 Labor, after the date of the enactment of this
20 Act.

21 (9) ZONE 3 OCCUPATION.—The term “zone 3
22 occupation” means an occupation that requires me-
23 dium preparation and is classified as a zone 3 occu-
24 pation on—

1 (A) the Occupational Information Network
2 Database (O*NET) on the date of the enact-
3 ment of this Act; or

4 (B) such Database or a similar successor
5 database, as designated by the Secretary of
6 Labor, after the date of the enactment of this
7 Act.

8 (b) ESTABLISHMENT.—There is established a Bureau
9 of Immigration and Labor Market Research as an inde-
10 pendent statistical agency within U.S. Citizenship and Im-
11 migration Services.

12 (c) COMMISSIONER.—The head of the Bureau of Im-
13 migration and Labor Market Research is the Commis-
14 sioner, who shall be appointed by the President, by and
15 with the advice and consent of the Senate.

16 (d) DUTIES.—The duties of the Commissioner are
17 limited to the following:

18 (1) To devise a methodology subject to publica-
19 tion in the Federal Register and an opportunity for
20 public comment regarding the calculation for the
21 index referred to in section 220(g)(2)(C) of the Im-
22 migration and Nationality Act, as added by section
23 4703.

24 (2) To determine and to publish in the Federal
25 Register the annual change to the numerical limita-

1 tion for nonimmigrant aliens described in subpara-
2 graph (W)(i) of section 101(a)(15) of the Immigra-
3 tion and Nationality Act (8 U.S.C. 1101(a)(15)), as
4 added by section 4702.

5 (3) With respect to the W Visa Program, to
6 supplement the recruitment methods employers may
7 use to attract United States workers and current
8 nonimmigrant aliens described in paragraph (2).

9 (4) With respect to the W Visa Program, to de-
10 vise a methodology subject to publication in the Fed-
11 eral Register and an opportunity for public comment
12 to designate shortage occupations in zone 1 occupa-
13 tions, zone 2 occupations, and zone 3 occupations.

14 (5) With respect to the W Visa Program, to
15 designate shortage occupations in any zone 1 occu-
16 pation, zone 2 occupation, or zone 3 occupation and
17 publish such occupations in the Federal Register.

18 (6) With respect to the W Visa Program, to
19 conduct a survey once every 3 months of the unem-
20 ployment rate of zone 1 occupations, zone 2 occupa-
21 tions, or zone 3 occupations that are construction
22 occupations in each metropolitan statistical area.

23 (7) To study and report to Congress on employ-
24 ment-based immigrant and nonimmigrant visa pro-

1 grams in the United States and to make annual rec-
2 ommendations to improve such programs.

3 (8) To carry out any functions required to
4 carry out the duties described in paragraphs (1)
5 through (7).

6 (e) DETERMINATION OF CHANGES TO NUMERICAL
7 LIMITATIONS.—The methodology required under sub-
8 section (d)(1) shall be published in the Federal Register
9 not later than 18 months after the date of the enactment
10 of this Act.

11 (f) DESIGNATION OF SHORTAGE OCCUPATIONS.—

12 (1) METHODS TO DETERMINE.—The Commis-
13 sioner shall—

14 (A) establish the methodology to designate
15 shortage occupations under subsection (d)(4);
16 and

17 (B) publish such methodology in the Fed-
18 eral Register not later than 18 months after the
19 date of the enactment of this Act.

20 (2) PETITION BY EMPLOYER.—The method-
21 ology established under paragraph (1) shall permit
22 an employer to petition the Commissioner for a de-
23 termination that a particular occupation in a par-
24 ticular metropolitan statistical area is a shortage oc-
25 cupation.

1 (3) REQUIREMENT FOR NOTICE AND COM-
2 MENT.—The methodology established under para-
3 graph (1) shall be effective only after publication in
4 the Federal Register and an opportunity for public
5 comment.

6 (g) EMPLOYEE EXPERTISE.—The employees of the
7 Bureau shall have the expertise necessary to identify labor
8 shortages in the United States and make recommenda-
9 tions to the Commissioner on the impact of immigrant and
10 nonimmigrant aliens on labor markets in the United
11 States, including expertise in economics, labor markets,
12 demographics and methods of recruitment of United
13 States workers.

14 (h) INTERAGENCY COOPERATION.—At the request of
15 the Commissioner, the Secretary of Commerce, the Direc-
16 tor of the Bureau of the Census, the Secretary of Labor,
17 and the Commissioner of the Bureau of Labor Statistics
18 shall—

- 19 (1) provide data to the Commissioner;
20 (2) conduct appropriate surveys; and
21 (3) assist the Commissioner in preparing the
22 recommendations referred to subsection (d)(5).

23 (i) BUDGET.—

24 (1) REPORT.—Not later than 1 year after the
25 date of the enactment of this Act, the Director of

1 U.S. Citizenship and Immigration Services shall sub-
2 mit to Congress a report of the estimated budget
3 that the Bureau will need to carry out the duties de-
4 scribed in subsection (d).

5 (2) AUDIT.—The Comptroller General of the
6 United States shall submit to Congress a report that
7 is an audit of the budget prepared by the Director
8 under paragraph (1).

9 (j) FUNDING.—

10 (1) APPROPRIATION OF FUNDS.—There is here-
11 by appropriated, out of any money in the Treasury
12 not otherwise appropriated, \$20,000,000 to establish
13 the Bureau.

14 (2) USE OF W NONIMMIGRANT FEES.—The
15 amounts collected for fees under section
16 220(e)(6)(B) of the Immigration and Nationality
17 Act, as added by section 4703, shall be used to es-
18 tablish and fund the Bureau.

19 (3) OTHER FEES.—The Secretary may establish
20 other fees for the sole purpose of funding the W
21 Visa Program that are related to the hiring of alien
22 workers.

1 **SEC. 4702. NONIMMIGRANT CLASSIFICATION FOR W NON-**
2 **IMMIGRANTS.**

3 Section 101(a)(15)(W), as added by section 2211, is
4 amended by inserting before clause (iii) the following:

5 “(i) to perform services or labor for a
6 registered non-agricultural employer in a
7 registered position (as those terms are de-
8 fined in section 220(a)) in accordance with
9 the requirements under section 220;

10 “(ii) to accompany or follow to join
11 such an alien described in clause (i) as the
12 spouse or child of such alien;”.

13 **SEC. 4703. ADMISSION OF W NONIMMIGRANT WORKERS.**

14 (a) ADMISSION OF W NONIMMIGRANT WORKERS.—

15 (1) IN GENERAL.—Chapter 2 of title II (8
16 U.S.C. 1181 et seq.) is amended by adding at the
17 end the following:

18 **“SEC. 220. ADMISSION OF W NONIMMIGRANT WORKERS.**

19 “(a) DEFINITIONS.—In this section:

20 “(1) BUREAU.—The term ‘Bureau’ means the
21 Bureau of Immigration and Labor Market Research
22 established by section 4701 of the Border Security,
23 Economic Opportunity, and Immigration Moderniza-
24 tion Act.

25 “(2) CERTIFIED ALIEN.—The term ‘certified
26 alien’ means an alien that the Secretary of State has

1 certified is eligible to be a W nonimmigrant if the
2 alien is hired by a registered employer for a reg-
3 istered position.

4 “(3) COMMISSIONER.—The term ‘Commis-
5 sioner’ means the Commissioner of the Bureau.

6 “(4) CONSTRUCTION OCCUPATION.—The term
7 ‘construction occupation’ means an occupation de-
8 fined by the Bureau of Labor Statistics as being
9 within the construction industry for the purposes of
10 publishing the Bureau’s workforce statistics.

11 “(5) DEPARTMENT.—Except as otherwise pro-
12 vided, the term ‘Department’ means the Department
13 of Homeland Security.

14 “(6) ELIGIBLE OCCUPATION.—The term ‘eligi-
15 ble occupation’ means an eligible occupation de-
16 scribed in subsection (e)(3).

17 “(7) EMPLOYER.—

18 “(A) IN GENERAL.—The term ‘employer’
19 means any person or entity hiring an individual
20 for employment in the United States.

21 “(B) TREATMENT OF SINGLE EM-
22 PLOYER.—For purposes of determining the
23 number of employees or United States workers
24 employed by an employer, a single entity shall
25 be treated as 1 employer.

1 “(8) EXCLUDED GEOGRAPHIC LOCATION.—The
2 term ‘excluded geographic location’ means an ex-
3 cluded geographic location described in subsection
4 (f).

5 “(9) METROPOLITAN STATISTICAL AREA.—The
6 term ‘metropolitan statistical area’ means a geo-
7 graphic area designated as a metropolitan statistical
8 area by the Director of the Office of Management
9 and Budget.

10 “(10) REGISTERED EMPLOYER.—The term
11 ‘registered employer’ means a non-agricultural em-
12 ployer that the Secretary has designated as a reg-
13 istered employer under subsection (d).

14 “(11) SECRETARY.—Except as otherwise spe-
15 cifically provided, the term ‘Secretary’ means the
16 Secretary of Homeland Security.

17 “(12) SINGLE ENTITY.—The term ‘single enti-
18 ty’ means any group treated as a single employer
19 under subsection (b), (c), (m), or (o) of section 414
20 of the Internal Revenue Code of 1986.

21 “(13) SHORTAGE OCCUPATION.—The term
22 ‘shortage occupation’ means a shortage occupation
23 designated by the Commissioner pursuant to section
24 4701(d)(4) of the Border Security, Economic Oppor-
25 tunity, and Immigration Modernization Act.

1 “(14) SMALL BUSINESS.—The term ‘small busi-
2 ness’ means an employer that employs 25 or fewer
3 full-time equivalent employees.

4 “(15) UNITED STATES WORKER.—The term
5 ‘United States worker’ means an individual who is—

6 “(A) employed or seeking employment in
7 the United States; and

8 “(B)(i) a national of the United States;

9 “(ii) an alien lawfully admitted for perma-
10 nent residence;

11 “(iii) an alien in Registered Provisional
12 Immigrant Status; or

13 “(iv) any other alien authorized to work in
14 the United States with no limitation as to the
15 alien’s employer.

16 “(16) W NONIMMIGRANT.—The term ‘W non-
17 immigrant’ means an alien admitted as a non-
18 immigrant pursuant to section 101(a)(15)(W)(i).

19 “(17) W VISA PROGRAM.—The term ‘W Visa
20 Program’ means the program for the admission of
21 nonimmigrant aliens described in section
22 101(a)(15)(W)(i).

23 “(18) ZONE 1 OCCUPATION.—The term ‘zone 1
24 occupation’ means an occupation that requires little

1 or no preparation and is classified as a zone 1 occu-
2 pation on—

3 “(A) the Occupational Information Net-
4 work Database (O*NET) on the date of the en-
5 actment of the Border Security, Economic Op-
6 portunity, and Immigration Modernization Act;
7 or

8 “(B) such Database or a similar successor
9 database, as designated by the Secretary of
10 Labor, after the date of the enactment of the
11 Border Security, Economic Opportunity, and
12 Immigration Modernization Act.

13 “(19) ZONE 2 OCCUPATION.—The term ‘zone 2
14 occupation’ means an occupation that requires some
15 preparation and is classified as a zone 2 occupation
16 on—

17 “(A) the Occupational Information Net-
18 work Database (O*NET) on the date of the en-
19 actment of the Border Security, Economic Op-
20 portunity, and Immigration Modernization Act;
21 or

22 “(B) such Database or a similar successor
23 database, as designated by the Secretary of
24 Labor, after the date of the enactment of the

1 Border Security, Economic Opportunity, and
2 Immigration Modernization Act.

3 “(20) ZONE 3 OCCUPATION.—The term ‘zone 3
4 occupation’ means an occupation that requires me-
5 dium preparation and is classified as a zone 3 occu-
6 pation on—

7 “(A) the Occupational Information Net-
8 work Database (O*NET) on the date of the en-
9 actment of the Border Security, Economic Op-
10 portunity, and Immigration Modernization Act;
11 or

12 “(B) such Database or a similar successor
13 database, as designated by the Secretary of
14 Labor, after the date of the enactment of the
15 Border Security, Economic Opportunity, and
16 Immigration Modernization Act.

17 “(b) ADMISSION INTO THE UNITED STATES.—

18 “(1) W NONIMMIGRANTS.—Subject to this sec-
19 tion, a certified alien is eligible to be admitted to the
20 United States as a W nonimmigrant if the alien is
21 hired by a registered employer for employment in a
22 registered position in a location that is not an ex-
23 cluded geographic location.

24 “(2) SPOUSE AND MINOR CHILDREN.—The—

1 “(A) alien spouse and minor children of a
2 W nonimmigrant may be admitted to the
3 United States pursuant to clause (ii) of section
4 101(a)(15)(W) during the period of the prin-
5 cipal W nonimmigrant’s admission; and

6 “(B) such alien spouse shall be—

7 “(i) authorized to engage in employ-
8 ment in the United States during such pe-
9 riod of admission; and

10 “(ii) provided with an employment au-
11 thorization document, stamp, or other ap-
12 propriate work permit.

13 “(c) W NONIMMIGRANTS.—

14 “(1) CERTIFIED ALIEN.—

15 “(A) APPLICATION.—An alien seeking to
16 be a W nonimmigrant shall apply to the Sec-
17 retary of State at a United States embassy or
18 consulate in a foreign country to be a certified
19 alien.

20 “(B) CRITERIA.—An alien is eligible to be
21 a certified alien if the alien—

22 “(i) is not inadmissible under this
23 Act;

24 “(ii) passes a criminal background
25 check;

1 “(iii) agrees to accept only registered
2 positions in the United States; and

3 “(iv) meets other criteria as estab-
4 lished by the Secretary.

5 “(2) W NONIMMIGRANT STATUS.—Only an alien
6 that is a certified alien may be admitted to the
7 United States as a W nonimmigrant.

8 “(3) INITIAL EMPLOYMENT.—A W non-
9 immigrant shall report to such nonimmigrant’s ini-
10 tial employment in a registered position not later
11 than 14 days after such nonimmigrant is admitted
12 to the United States.

13 “(4) TERM OF ADMISSION.—

14 “(A) INITIAL TERM.—A certified alien may
15 be granted W nonimmigrant status for an ini-
16 tial period of 3 years.

17 “(B) RENEWAL.—A W nonimmigrant may
18 renew his or her status as a W nonimmigrant
19 for additional 3-year periods. Such a renewal
20 may be made while the W nonimmigrant is in
21 the United States and shall not require the
22 alien to depart the United States.

23 “(5) PERIODS OF UNEMPLOYMENT.—A W non-
24 immigrant—

1 “(A) may be unemployed for a period of
2 not more than 60 consecutive days; and

3 “(B) shall depart the United States if such
4 W nonimmigrant is unable to obtain employ-
5 ment during such period.

6 “(6) TRAVEL.—A W nonimmigrant may travel
7 outside the United States and be readmitted to the
8 United States. Such travel may not extend the pe-
9 riod of authorized admission of such W non-
10 immigrant.

11 “(d) REGISTERED EMPLOYER.—

12 “(1) APPLICATION.—An employer seeking to be
13 a registered employer shall submit an application to
14 the Secretary. Each such application shall include
15 the following:

16 “(A) Documentation to establish that the
17 employer is a bona-fide employer.

18 “(B) The employer’s Federal tax identi-
19 fication number or employer identification num-
20 ber issued by the Internal Revenue Service.

21 “(C) The number of W nonimmigrants the
22 employer estimates it will seek to employ annu-
23 ally.

24 “(2) REFERRAL FOR FRAUD INVESTIGATION.—
25 The Secretary may refer an application submitted

1 under paragraph (1) or subsection (e)(1)(A) to the
2 Fraud Detection and National Security Directorate
3 of U.S. Citizenship and Immigration Services if
4 there is evidence of fraud for potential investigation.

5 “(3) INELIGIBLE EMPLOYERS.—

6 “(A) IN GENERAL.—Notwithstanding any
7 other applicable penalties under law, the Sec-
8 retary may deny an employer’s application to be
9 a registered employer if the Secretary deter-
10 mines, after notice and an opportunity for a
11 hearing, that the employer submitting such ap-
12 plication—

13 “(i) has, with respect to the applica-
14 tion required under paragraph (1), includ-
15 ing any attestations required by law—

16 “(I) knowingly misrepresented a
17 material fact;

18 “(II) knowingly made a fraudu-
19 lent statement; or

20 “(III) knowingly failed to comply
21 with the terms of such attestations; or

22 “(ii) failed to cooperate in the audit
23 process in accordance with regulations pro-
24 mulgated by the Secretary;

1 “(iii) has been convicted of an offense
2 set out in chapter 77 of title 18, United
3 States Code, or any conspiracy to commit
4 such offenses, or any human trafficking of-
5 fense under State or territorial law;

6 “(iv) has, within 2 years prior to the
7 date of application—

8 “(I) received a final adjudication
9 of having committed any hazardous
10 occupation orders violation resulting
11 in injury or death under the child
12 labor provisions contained in section
13 12 of the Fair Labor Standards Act
14 of 1938 (29 U.S.C. 211) and any per-
15 tinent regulation;

16 “(II) received a final adjudication
17 assessing a civil money penalty for
18 any repeated or willful violation of the
19 minimum wage provisions of section 6
20 of the Fair Labor Standards Act of
21 1938 (29 U.S.C. 206); or

22 “(III) received a final adjudica-
23 tion assessing a civil money penalty
24 for any willful violation of the over-
25 time provisions of section 7 of the

1 Fair Labor Standards Act of 1938 or
2 any regulations thereunder; or

3 “(v) has, within 2 years prior to the
4 date of application, received a final adju-
5 dication for a willful violation or repeated
6 serious violations involving injury or
7 death—

8 “(I) of section 5 of the Occupa-
9 tional Safety and Health Act of 1970
10 (29 U.S.C. 654);

11 “(II) of any standard, rule, or
12 order promulgated pursuant to section
13 6 of the Occupational Safety and
14 Health Act of 1970 (29 U.S.C. 655);
15 or

16 “(III) of a plan approved under
17 section 18 of the Occupational Safety
18 and Health Act of 1970 (29 U.S.C.
19 667).

20 “(B) LENGTH OF INELIGIBILITY.—

21 “(i) TEMPORARY INELIGIBILITY.—An
22 employer described in subparagraph (A)
23 may be ineligible to be a registered em-
24 ployer for a period that is not less than the

1 time period determined by the Secretary
2 and not more than 3 years.

3 “(ii) PERMANENT INELIGIBILITY.—

4 An employer who has been convicted of
5 any offense set out in chapter 77 of title
6 18, United States Code, or any conspiracy
7 to commit such offenses, or any human
8 trafficking offense under State or terri-
9 torial law shall be permanently ineligible to
10 be a registered employer.

11 “(4) TERM OF REGISTRATION.—The Secretary
12 shall approve applications meeting the criteria of
13 this subsection for a term of 3 years.

14 “(5) RENEWAL.—An employer may submit an
15 application to renew the employer’s status as a reg-
16 istered employer for additional 3-year periods.

17 “(6) FEE.—At the time an employer’s applica-
18 tion to be a registered employer or to renew such
19 status is approved, such employer shall pay a fee in
20 an amount determined by the Secretary to be suffi-
21 cient to cover the costs of the registry of such em-
22 ployers.

23 “(7) CONTINUED ELIGIBILITY.—Each reg-
24 istered employer shall submit to the Secretary an
25 annual report that demonstrates that the registered

1 employer has provided the wages and working condi-
2 tions the registered employer agreed to provide to its
3 employees.

4 “(e) REGISTERED POSITIONS.—

5 “(1) IN GENERAL.—

6 “(A) APPLICATION.—Each registered em-
7 ployer shall submit to the Secretary an applica-
8 tion to designate a position for which the em-
9 ployer is seeking a W nonimmigrant as a reg-
10 istered position. The Secretary is authorized to
11 determine if the wage paid by the employer
12 complies with subparagraph (B)(iv). Each such
13 application shall include a description of each
14 such position.

15 “(B) ATTESTATION.—An application sub-
16 mitted under subparagraph (A) shall include an
17 attestation of the following:

18 “(i) The number of full-time equiva-
19 lent employees of the employer.

20 “(ii) The occupational category, as
21 classified by the Secretary of Labor, for
22 which the registered position is sought.

23 “(iii) Whether the occupation for
24 which the registered position is sought is a
25 shortage occupation.

1 “(iv) Except as provided in subsection
2 (g)(4)(C), the wages to be paid to W non-
3 immigrants employed by the employer in
4 the registered position, including a position
5 in a shortage occupation, will be the great-
6 er of—

7 “(I) the actual wage level paid by
8 the employer to other employees with
9 similar experience and qualifications
10 for such position; or

11 “(II) the prevailing wage level for
12 the occupational classification of the
13 position in the metropolitan statistical
14 area of the employment, based on the
15 best information available as of the
16 time of filing the application.

17 “(v) The working conditions for W
18 nonimmigrants will not adversely affect the
19 working conditions of other workers em-
20 ployed in similar positions.

21 “(vi) The employer has carried out
22 the recruiting activities required by para-
23 graph (2)(B).

24 “(vii) There is no qualified United
25 States worker who has applied for the po-

1 sition and who is ready, willing, and able
2 to fill such position pursuant to the re-
3 quirements in subparagraphs (B) and (C)
4 of paragraph (2).

5 “(viii) There is not a strike, lockout,
6 or work stoppage in the course of a labor
7 dispute in the occupation at the place of
8 employment at which the W nonimmigrant
9 will be employed. If such strike, lockout, or
10 work stoppage occurs following submission
11 of the application, the employer will pro-
12 vide notification in accordance with all ap-
13 plicable regulations.

14 “(ix)(I) The employer has not laid off
15 and will not layoff a United States worker
16 during the period beginning 90 days prior
17 to and ending 90 days after the date the
18 employer files an application for designa-
19 tion of a position for which the W non-
20 immigrant is sought or hires such W non-
21 immigrant, unless the employer has noti-
22 fied such United States worker of the posi-
23 tion and documented the legitimate rea-
24 sons that such United States worker is not
25 qualified or available for the position.

1 “(II) A United States worker is not
2 laid off for purposes of this subparagraph
3 if, at the time such worker’s employment is
4 terminated, such worker is not employed in
5 the same occupation and in the same met-
6 ropolitan statistical area where the reg-
7 istered position referred to in subclause (I)
8 is located.

9 “(x) The employer has agreed to sub-
10 stantially comply with all applicable labor
11 and employment laws related to the W
12 nonimmigrant’s employment.

13 “(C) BEST INFORMATION AVAILABLE.—In
14 subparagraph (B)(iv)(II), the term ‘best infor-
15 mation available’, with respect to determining
16 the prevailing wage for a position, means—

17 “(i) a controlling collective bargaining
18 agreement or Federal contract wage, if ap-
19 plicable;

20 “(ii) if there is no applicable wage
21 under clause (i), the wage level commensu-
22 rate with the experience, training, and su-
23 pervision required for the job based on Bu-
24 reau of Labor Statistics data; or

1 “(iii) if the data referred to in clause
2 (ii) is not available, a legitimate and recent
3 private survey of the wages paid for such
4 positions in the metropolitan statistical
5 area.

6 “(D) PERMIT.—The Secretary shall pro-
7 vide each registered employer whose application
8 submitted under subparagraph (A) is approved
9 with a permit that includes the number and de-
10 scription of such employer’s approved registered
11 positions.

12 “(E) TERM OF REGISTRATION.—The ap-
13 proval of a registered position under subpara-
14 graph (A) is for a term that begins on the date
15 of such approval and ends on the earlier of—

16 “(i) the date the employer’s status as
17 a registered employer is terminated;

18 “(ii) three years after the date of such
19 approval; or

20 “(iii) upon proper termination of the
21 registered position by the employer.

22 “(2) REQUIREMENTS.—

23 “(A) ELIGIBLE OCCUPATION.—Each reg-
24 istered position shall be for a position in an eli-
25 gible occupation as described in paragraph (3).

1 “(B) RECRUITMENT OF UNITED STATES
2 WORKERS.—

3 “(i) REQUIREMENTS.—A position may
4 not be a registered position unless the reg-
5 istered employer—

6 “(I) advertises the position for a
7 period of 30 days, including the wage
8 range, location, and proposed start
9 date—

10 “(aa) on the Internet
11 website maintained by the Sec-
12 retary of Labor for the purpose
13 of such advertising; and

14 “(bb) with the workforce
15 agency of the State where the po-
16 sition will be located; and

17 “(II) except as provided for in
18 subsection (g)(4)(A)(ii), carries out
19 not less than 3 of the recruiting ac-
20 tivities described in subparagraph (C).

21 “(ii) DURATION OF ADVERTISING.—
22 The 30 day periods required by item (aa)
23 of (bb) of clause (i)(I) may occur at the
24 same time.

1 “(C) RECRUITING ACTIVITIES.—The re-
2 cruiting activities described in this subpara-
3 graph, with respect to a position for which the
4 employer is seeking a W nonimmigrant, shall
5 consist of any combination of the following as
6 defined by the Secretary of Homeland Security:

7 “(i) Advertising such position at job
8 fairs.

9 “(ii) Advertising such position on the
10 employer’s external website.

11 “(iii) Advertising such position on job
12 search Internet websites.

13 “(iv) Advertising such position using
14 presentations or postings at vocational, ca-
15 reer technical schools, community colleges,
16 high schools, or other educational or train-
17 ing sites.

18 “(v) Posting such position with trade
19 associations.

20 “(vi) Utilizing a search firm to seek
21 applicants for such position.

22 “(vii) Advertising such position
23 through recruitment programs with place-
24 ment offices at vocational schools, career
25 technical schools, community colleges, high

1 schools, or other educational or training
2 sites.

3 “(viii) Advertising such position
4 through advertising or postings with local
5 libraries, journals, or newspapers.

6 “(ix) Seeking a candidate for such po-
7 sition through an employee referral pro-
8 gram with incentives.

9 “(x) Advertising such position on
10 radio or television.

11 “(xi) Advertising such position
12 through advertising, postings, or presen-
13 tations with newspapers, Internet websites,
14 job fairs, or community events targeted to
15 constituencies designed to increase em-
16 ployee diversity.

17 “(xii) Advertising such position
18 through career day presentations at local
19 high schools or community organizations.

20 “(xiii) Providing in-house training.

21 “(xiv) Providing third-party training.

22 “(xv) Advertising such position
23 through recruitment, educational, or other
24 cooperative programs offered by the em-

1 ployer and a local economic development
2 authority.

3 “(xvi) Advertising such position twice
4 in the Sunday ads in the primary daily cir-
5 culation newspaper in the area.

6 “(xvii) Any other recruitment activi-
7 ties determined to be appropriate to be
8 added by the Commissioner.

9 “(3) ELIGIBLE OCCUPATION.—

10 “(A) IN GENERAL.—An occupation is an
11 eligible occupation if the occupation—

12 “(i) is a zone 1 occupation, a zone 2
13 occupation, or zone 3 occupation; and

14 “(ii) is not an excluded occupation
15 under subparagraph (B).

16 “(B) EXCLUDED OCCUPATIONS.—

17 “(i) OCCUPATIONS REQUIRING COL-
18 LEGE DEGREES.—An occupation that is
19 listed in the Occupational Outlook Hand-
20 book published by the Bureau of Labor
21 Statistics (or similar successor publication)
22 that is classified as requiring an individual
23 with a bachelor’s degree or higher level of
24 education may not be an eligible occupa-
25 tion.

1 “(ii) COMPUTER OCCUPATIONS.—An
2 occupation in the field of computer oper-
3 ation, computer programming, or computer
4 repair may not be an eligible occupation.

5 “(C) PUBLICATION.—The Secretary of
6 Labor shall publish the eligible occupations,
7 designated as zone 1 occupations, zone 2 occu-
8 pations, or zone 3 occupations, on an on-going
9 basis on a publicly available website.

10 “(4) FILLING OF VACANCIES.—If a W non-
11 immigrant terminates employment in a registered
12 position or is terminated from such employment by
13 the registered employer, such employer may fill that
14 vacancy by hiring—

15 “(A) a certified alien;

16 “(B) a W nonimmigrant; or

17 “(C) a United States worker.

18 “(5) PERIOD OF APPROVAL.—

19 “(A) IN GENERAL.—Except as provided in
20 subparagraph (B), a registered position shall be
21 approved by the Secretary for a period of 3
22 years.

23 “(B) RETURNING W NONIMMIGRANTS.—

24 “(i) EXTENSION OF PERIOD.—A reg-
25 istered position shall continue to be a reg-

1 istered position at the end of the 3-year
2 period referred to in subparagraph (A) if
3 the W nonimmigrant hired for such posi-
4 tion is the beneficiary of a petition for im-
5 migrant status filed by the registered em-
6 ployer pursuant to this Act or is returning
7 to the same registered employer.

8 “(ii) TERMINATION OF PERIOD.—The
9 term of a registration position extended
10 under clause (i) shall terminate on the
11 date that is the earlier of—

12 “(I) the date an application or
13 petition by or for a W nonimmigrant
14 to obtain immigrant status is ap-
15 proved or denied by the Secretary; or

16 “(II) the date of the termination
17 of such W nonimmigrant’s employ-
18 ment with the registered employer.

19 “(6) FEES.—

20 “(A) REGISTRATION FEE.—

21 “(i) IN GENERAL.—At the time a reg-
22 istered position is approved for a registered
23 employer, such employer shall pay a reg-
24 istration fee in an amount determined by
25 the Secretary.

1 “(ii) USE OF FEE.—A fee collected
2 under clause (i) shall be used to fund any
3 aspect of the operation of the W Visa Pro-
4 gram.

5 “(B) ADDITIONAL FEE.—

6 “(i) IN GENERAL.—In addition to the
7 fee required by subparagraph (A), a reg-
8 istered employer shall pay an additional fee
9 for each approved registered position as
10 follows:

11 “(I) A fee of \$1,750 for the reg-
12 istered position if the registered em-
13 ployer is a small business and more
14 than 50 percent and less than 75 per-
15 cent of the employees of the registered
16 employer are not United States work-
17 ers.

18 “(II) A fee of \$3,500 for the reg-
19 istered position if the registered em-
20 ployer is a small business and more
21 than 75 percent of the employees of
22 the registered employer are not
23 United States workers.

24 “(III) A fee of \$3,500 for the
25 registered position if the registered

1 employer is not a small business and
2 more than 15 percent and less than
3 30 percent of the employees of the
4 registered employer are not United
5 States workers.

6 “(ii) USE OF FEE.—A fee collected
7 under clause (i) shall be used to fund the
8 operations of the Bureau.

9 “(C) PROHIBITION ON OTHER FEES.—A
10 registered employer may not be required to pay
11 an additional fee other than any fees specified
12 in this Act if the registered employer is a small
13 business.

14 “(7) PROHIBITION ON REGISTERED POSITIONS
15 FOR CERTAIN EMPLOYERS.—The Secretary may not
16 approve an application for a registered position for
17 an employer if the employer is not a small business
18 and 30 percent or more of the employees of the em-
19 ployer are not United States workers.

20 “(f) EXCLUDED GEOGRAPHIC LOCATION.—No appli-
21 cation for a registered position filed by a registered em-
22 ployer for an eligible occupation may be approved if the
23 registered position is located in a metropolitan statistical
24 area that has an unemployment rate that is more than
25 8 ½ percent as reported in the most recent month pre-

1 ceding the date that the application is submitted to the
2 Secretary unless—

3 “(1) the Commissioner has identified the eligi-
4 ble occupation as a shortage occupation; or

5 “(2) the Secretary approves the registered posi-
6 tion under subsection (g)(4).

7 “(g) NUMERICAL LIMITATION.—

8 “(1) REGISTERED POSITIONS.—

9 “(A) IN GENERAL.—Subject to paragraphs
10 (3) and (4), the maximum number of registered
11 positions that may be approved by the Sec-
12 retary for a year is as follows:

13 “(i) For the first year aliens are ad-
14 mitted as W nonimmigrants, 20,000.

15 “(ii) For the second such year,
16 35,000.

17 “(iii) For the third such year, 55,000.

18 “(iv) For the fourth such year,
19 75,000.

20 “(v) For each year after the fourth
21 such year, the level calculated for that year
22 under paragraph (2).

23 “(B) DATES.—The first year referred to in
24 subparagraph (A)(i) shall begin on April 1,
25 2015 and end on March 31, 2016, unless the

1 Secretary determines that such first year shall
2 begin on October 1, 2015 and end on Sep-
3 tember 30, 2016.

4 “(2) YEARS AFTER YEAR 4.—

5 “(A) CURRENT YEAR AND PRECEDING
6 YEAR.—In this paragraph—

7 “(i) the term ‘current year’ shall refer
8 to the 12-month period for which the cal-
9 culation of the numerical limits under this
10 paragraph is being performed; and

11 “(ii) the term ‘preceding year’ shall
12 refer to the 12-month period immediately
13 preceding the current year.

14 “(B) NUMERICAL LIMITATION.—Subject to
15 subparagraph (D), the number of registered po-
16 sitions that may be approved by the Secretary
17 for a year after the fourth year referred to in
18 paragraph (1)(A)(iv) shall be equal to the sum
19 of—

20 “(i) the number of such registered po-
21 sitions available under this paragraph for
22 the preceding year; and

23 “(ii) the product of—

24 “(I) the number of such reg-
25 istered positions available under this

1 paragraph for the preceding year;
2 multiplied by

3 “(II) the index for the current
4 year calculated under subparagraph
5 (C).

6 “(C) INDEX.—The index calculated under
7 this subparagraph for a current year equals 1
8 plus the sum of—

9 “(i) one-fifth of a fraction—

10 “(I) the numerator of which is
11 the number of registered positions
12 that registered employers applied to
13 have approved under subsection (e)(1)
14 for the preceding year minus the
15 number of registered positions ap-
16 proved under subsection (e) for the
17 preceding year; and

18 “(II) the denominator of which is
19 the number of registered positions ap-
20 proved under subsection (e) for the
21 preceding year;

22 “(ii) one-fifth of a fraction—

23 “(I) the numerator of which is
24 the number of registered positions the
25 Commissioner recommends be avail-

1 able under this subparagraph for the
2 current year minus the number of
3 registered positions available under
4 this subsection for the preceding year;
5 and

6 “(II) the denominator of which is
7 the number of registered positions
8 available under this subsection for the
9 preceding year;

10 “(iii) three-tenths of a fraction—

11 “(I) the numerator of which is
12 the number of unemployed United
13 States workers for the preceding year
14 minus the number of unemployed
15 United States workers for the current
16 year; and

17 “(II) the denominator of which is
18 the number of unemployed United
19 States workers for the preceding year;
20 and

21 “(iv) three-tenths of a fraction—

22 “(I) the numerator of which is
23 the number of job openings as set out
24 in the Job Openings and Labor Turn-
25 over Survey of the Bureau of Labor

1 Statistics for the current year minus
2 such number of job openings for the
3 preceding year; and

4 “(II) the denominator of which is
5 the number of such job openings for
6 the preceding year;

7 “(D) MINIMUM AND MAXIMUM LEVELS.—

8 The number of registered positions calculated
9 under subparagraph (B) for a 12-month period
10 may not be less than 20,000 or more than
11 200,000.

12 “(3) ADDITIONAL REGISTERED POSITIONS FOR
13 SHORTAGE OCCUPATIONS.—In addition to the num-
14 ber of registered positions made available for a year
15 under paragraph (1), the Secretary shall make avail-
16 able for a year an additional number of registered
17 positions for shortage occupations in a particular
18 metropolitan statistical area.

19 “(4) SPECIAL ALLOCATIONS OF REGISTERED
20 POSITIONS.—

21 “(A) AUTHORITY TO MAKE AVAILABLE.—

22 In addition to the number of registered posi-
23 tions made available for a year under para-
24 graph (1) or (3), the Secretary shall make addi-

1 tional registered positions available for the year
2 for a specific registered employer if—

3 “(i)(I) the maximum number of reg-
4 istered positions available under paragraph
5 (1) have been approved for the year and
6 none remain available for allocation; or

7 “(II) such registered employer is lo-
8 cated in a metropolitan statistical area
9 that has an unemployment rate that is
10 more than 8 ½ percent as reported in the
11 most recent month preceding the date that
12 the application is submitted to the Sec-
13 retary; and

14 “(ii) such registered employer has car-
15 ried out not less than 7 of the recruiting
16 activities described in subsection (e)(2)(C)
17 and posts the position, including the wage
18 range, location, and initial date of employ-
19 ment, for not less than 30 days—

20 “(I) on the Internet website
21 maintained by the Secretary of Labor
22 for the purpose of such advertising;
23 and

1 “(II) with the workforce agency
2 of the State where the position will be
3 located.

4 “(B) DURATION OF POSTING.—The 30 day
5 periods required by subclauses (I) or (II) of
6 subparagraph (A)(iii) may occur at the same
7 time.

8 “(C) WAGES.—A W nonimmigrant hired
9 to perform an eligible occupation pursuant to a
10 registered position made available under this
11 paragraph may not be paid less than the great-
12 er of—

13 “(i) the level 4 wage set out in the
14 Foreign Labor Certification Data Center
15 Online Wage Library (or similar successor
16 website) maintained by the Secretary of
17 Labor for such occupation in that metro-
18 politan statistical area; or

19 “(ii) the mean of the highest two-
20 thirds of wages surveyed for such occupa-
21 tion in that metropolitan statistical area.

22 “(D) REDUCTION OF FUTURE REGISTERED
23 POSITIONS.—Each registered position made
24 available for a year under this paragraph shall
25 reduce by 1 the number of registered positions

1 made available under paragraph (g)(1) for the
2 following year or the earliest possible year for
3 which a registered position is available. The
4 limitation contained in paragraph (h)(4) shall
5 not be reduced by any registered position made
6 available under this paragraph.

7 “(5) OTHER CONSIDERATION.—In no event
8 shall the number of visas issued under section
9 101(a)(15)(W)(i) exceed the number of registered
10 positions in existence.

11 “(h) ALLOCATION OF REGISTERED POSITIONS.—

12 “(1) IN GENERAL.—

13 “(A) FIRST 6-MONTH PERIOD.—The num-
14 ber of registered positions available for the 6-
15 month period beginning on the first day of a
16 year is 50 percent of the maximum number of
17 registered positions available for such year
18 under subsection (g)(1). Such registered posi-
19 tions shall be allocated as described in this sub-
20 section.

21 “(B) SECOND 6-MONTH PERIOD.—The
22 number of registered positions available for the
23 6-month period ending on the last day of a year
24 is the maximum number of registered positions
25 available for such year under subsection (g)(1)

1 minus the number of registered positions ap-
2 proved during the 6-month period referred to in
3 subsection (A). Such registered positions shall
4 be allocated as described in this subsection.

5 “(2) SHORTAGE OCCUPATIONS.—

6 “(A) IN GENERAL.—For the first month of
7 each 6-month period referred to in subpara-
8 graph (A) or (B) of paragraph (1) a registered
9 position may not be created in an occupation
10 that is not a shortage occupation.

11 “(B) INITIAL DESIGNATIONS.—Subpara-
12 graph (A) shall not apply in any period for
13 which the Commissioner has not designated any
14 shortage occupations.

15 “(3) SMALL BUSINESSES.—During the second,
16 third, and fourth months of each 6-month period re-
17 ferred to in subparagraph (A) or (B) of paragraph
18 (1), one-third of the number of registered positions
19 allocated for such period shall be approved only for
20 a registered employer that is a small business. Any
21 such registered positions not approved for such
22 small businesses during such months shall be avail-
23 able for any registered employer during the last 2
24 months of each such 6-month period.

1 “(4) ANIMAL PRODUCTION SUBSECTORS.—In
2 addition to the number of registered positions made
3 available for a year under paragraph (1) or (3) of
4 such section (g), the Secretary shall make additional
5 registered positions available for the year for occupa-
6 tions designated by the Secretary of Labor as Ani-
7 mal Production Subsectors. The numerical limitation
8 for such additional registered positions shall be no
9 more than 10 percent of the annual numerical limi-
10 tation provided for in such paragraph (1).

11 “(5) LIMITATION FOR CONSTRUCTION OCCUPA-
12 TIONS.—

13 “(A) IN GENERAL.—Subject to subpara-
14 graph (B), not more than 33 percent of the reg-
15 istered positions made available under sub-
16 section (g)(1) for a year may be granted to per-
17 form work in a construction occupation.

18 “(B) MAXIMUM LEVEL.—Notwithstanding
19 subparagraph (A), the number of registered po-
20 sitions granted to perform work in a construc-
21 tion occupation under subsection (g)(1) may
22 not exceed 15,000 for a year and 7,500 for any
23 6-month period.

24 “(C) PROHIBITION FOR OCCUPATIONS
25 WITH HIGH UNEMPLOYMENT.—

1 “(i) IN GENERAL.—A registered em-
2 ployer may not hire a certified alien for a
3 registered position to perform work in a
4 construction occupation if the unemploy-
5 ment rate for construction occupations in
6 the corresponding occupational job zone in
7 that metropolitan statistical area was more
8 than 8½ percent.

9 “(ii) DETERMINATION OF UNEMPLOY-
10 MENT RATE.—The unemployment rate
11 used in clause (i) shall be determined—

12 “(I) using the most recent survey
13 taken by the Bureau; or

14 “(II) if a survey referred to in
15 subclause (I) is not available, a recent
16 and legitimate private survey.

17 “(i) PORTABILITY.—A W nonimmigrant who is ad-
18 mitted to the United States for employment by a reg-
19 istered employer may—

20 “(1) terminate such employment for any rea-
21 son; and

22 “(2) seek and accept employment with another
23 registered employer in any other registered position
24 within the terms and conditions of the W non-
25 immigrants visa.

1 “(j) PROMOTION.—A registered employer may pro-
2 mote a W nonimmigrant if the W nonimmigrant has been
3 employed with that employer for a period of not less than
4 12 months. Such a promotion shall not increase the total
5 number of registered positions available to that employer.

6 “(k) PROHIBITION ON OUTPLACEMENT.—A reg-
7 istered employer may not place, outsource, lease, or other-
8 wise contract for the services or placement of a W non-
9 immigrant employee with another employer if more than
10 15 percent of the employees of the registered employer are
11 W nonimmigrants.

12 “(l) W NONIMMIGRANT PROTECTIONS.—

13 “(1) APPLICABILITY OF LAWS.—A W non-
14 immigrant shall not be denied any right or any rem-
15 edy under Federal, State, or local labor or employ-
16 ment law that would be applicable to a United
17 States worker employed in a similar position with
18 the employer because of the alien’s status as a non-
19 immigrant worker.

20 “(2) WAIVER OF RIGHTS PROHIBITED.—

21 “(A) IN GENERAL.—A W nonimmigrant
22 may not be required to waive any substantive
23 rights or protections under this Act.

1 “(B) CONSTRUCTION.—Nothing under this
2 paragraph may be construed to affect the inter-
3 pretation of any other law.

4 “(3) PROHIBITION ON TREATMENT AS INDE-
5 PENDENT CONTRACTORS.—

6 “(A) IN GENERAL.—Notwithstanding any
7 other provision of law—

8 “(i) a W nonimmigrant is prohibited
9 from being treated as an independent con-
10 tractor under any Federal or State law;
11 and

12 “(ii) no person, including an employer
13 or labor contractor and any persons who
14 are affiliated with or contract with an em-
15 ployer or labor contractor, may treat a W
16 nonimmigrant as an independent con-
17 tractor.

18 “(B) CONSTRUCTION.—Subparagraph (A)
19 may not be construed to prevent registered em-
20 ployers who operate as independent contractors
21 from employing W nonimmigrants.

22 “(4) PAYMENT OF FEES.—

23 “(A) IN GENERAL.—A fee related to the
24 hiring of a W nonimmigrant required to be paid
25 by an employer under this Act shall be paid by

1 the employer and may not be deducted from the
2 wages or other compensation paid to a W non-
3 immigrant.

4 “(B) EXCLUDED COSTS.—The cost of
5 round trip transportation from a certified
6 alien’s home to the location of a registered posi-
7 tion and the cost of obtaining a foreign pass-
8 port are not fees required to be paid by the em-
9 ployer.

10 “(5) TAX RESPONSIBILITIES.—An employer
11 shall comply with all applicable Federal, State, and
12 local tax laws with respect to each W nonimmigrant
13 employed by the employer.

14 “(6) WHISTLEBLOWER PROTECTION.—

15 “(A) PROHIBITED ACTIVITIES.—It shall be
16 unlawful for an employer of a W nonimmigrant
17 to intimidate, threaten, restrain, coerce, retali-
18 ate, discharge, or in any other manner, dis-
19 criminate against an employee or former em-
20 ployee because the employee or former em-
21 ployee—

22 “(i) discloses information to the em-
23 ployer or any other person that the em-
24 ployee or former employee reasonably be-

1 believes demonstrates a violation of this sec-
2 tion; or

3 “(ii) cooperates or seeks to cooperate
4 in an investigation or other proceeding
5 concerning compliance with the require-
6 ments of this section.

7 “(m) COMPLAINT PROCESS.—The Secretary shall es-
8 tablish a process for the receipt, investigation, and disposi-
9 tion of complaints by any person with respect to—

10 “(1) the failure of a registered employer to
11 meet a condition of this section; or

12 “(2) the lay off or non-hiring of a United
13 States worker as prohibited under this section.

14 “(n) ENFORCEMENT.—

15 “(1) IN GENERAL.—The Secretary shall pro-
16 mulgate regulations for the receipt, investigation,
17 and disposition of complaints by an aggrieved W
18 nonimmigrant respecting a violation of this section.

19 “(2) FILING DEADLINE.—No investigation or
20 hearing shall be conducted on a complaint con-
21 cerning a violation under this section unless the
22 complaint was filed not later than 6 months after
23 the date of such violation.

24 “(3) REASONABLE BASIS.—The Secretary shall
25 conduct an investigation under this subsection if

1 there is reasonable basis to believe that a violation
2 of this section has occurred. The process established
3 under this subsection shall provide that, not later
4 than 30 days after a complaint is filed, the Sec-
5 retary shall determine if there is reasonable cause to
6 find such a violation.

7 “(4) NOTICE AND HEARING.—

8 “(A) IN GENERAL.—Not later than 60
9 days after the Secretary makes a determination
10 of reasonable basis under paragraph (3), the
11 Secretary shall issue a notice to the interested
12 parties and offer an opportunity for a hearing
13 on the complaint, in accordance with section
14 556 of title 5, United States Code.

15 “(B) HEARING DEADLINE.—Not later than
16 60 days after the date of a hearing under this
17 paragraph, the Secretary shall make a finding
18 on the matter.

19 “(5) ATTORNEY’S FEES.—

20 “(A) AWARD.—A complainant who prevails
21 in an action under this subsection with respect
22 to a claim related to wages or compensation for
23 employment, or a claim for a violation of sub-
24 section (l) or (m), shall be entitled to an award
25 of reasonable attorney’s fees and costs.

1 “(B) FRIVOLOUS COMPLAINTS.—A com-
2 plainant who files a frivolous complaint for an
3 improper purpose under this subsection shall be
4 liable for the reasonable attorney’s fees and
5 costs of the person named in the complaint.

6 “(6) POWER OF THE SECRETARY.—The Sec-
7 retary may bring an action in any court of com-
8 petent jurisdiction—

9 “(A) to seek remedial action, including in-
10 junctive relief;

11 “(B) to recover the damages described in
12 this subsection and subsection (o); or

13 “(C) to ensure compliance with terms and
14 conditions described in subsection (l)(6).

15 “(7) OTHER RIGHTS OF EMPLOYEES.—The
16 rights and remedies provided to W nonimmigrants
17 under this section are in addition to any other con-
18 tractual or statutory rights and remedies of the
19 workers, and are not intended to alter or affect such
20 rights and remedies.

21 “(o) PENALTIES.—

22 “(1) IN GENERAL.—If, after notice and an op-
23 portunity for a hearing, the Secretary finds a viola-
24 tion of this section, the Secretary may impose ad-
25 ministrative remedies and penalties, including—

1 “(A) back wages;

2 “(B) benefits; and

3 “(C) civil monetary penalties.

4 “(2) CIVIL PENALTIES.—The Secretary may
5 impose, as a civil penalty—

6 “(A) for a violation of this subsection—

7 “(i) a fine in an amount not more
8 than \$2,000 per violation per affected
9 worker and \$4,000 per violation per af-
10 fected worker for each subsequent viola-
11 tion;

12 “(ii) if the violation was willful, a fine
13 in an amount not more than \$5,000 per
14 violation per affected worker;

15 “(iii) if the violation was willful and if
16 in the course of such violation a United
17 States worker was harmed, a fine in an
18 amount not more than \$25,000 per viola-
19 tion per affected worker; or

20 “(B) for knowingly failing to materially
21 comply with the terms of representations made
22 in petitions, applications, certifications, or at-
23 testations under this section—

24 “(i) a fine in an amount not more
25 than \$4,000 per aggrieved worker; and

1 “(ii) upon the occasion of a third of-
2 fense of failure to comply with representa-
3 tions, a fine in an amount not to exceed
4 \$5,000 per affected worker and designa-
5 tion as an ineligible employer, recruiter, or
6 broker for purposes of any immigrant or
7 nonimmigrant program.

8 “(3) CRIMINAL PENALTY.—Any person who
9 knowingly misrepresents the number of full-time
10 equivalent employees of an employer or the number
11 of employees of a person who are United States
12 workers for the purpose of reducing a fee under sub-
13 section (e)(6) or avoiding the limitation in sub-
14 section (e)(7), shall be fined in accordance with title
15 18, United States Code, in an amount up to
16 \$25,000 or imprisoned not more than 1 year, or
17 both.

18 “(p) MONITORING.—

19 “(1) REQUIREMENT TO MONITOR.—The Sec-
20 retary shall monitor the movement of W non-
21 immigrants in registered positions through—

22 “(A) the Employment Verification System
23 described in section 274A(d); and

24 “(B) the electronic monitoring system de-
25 scribed in paragraph (2).

1 “(2) ELECTRONIC MONITORING SYSTEM.—The
2 Secretary, through U.S. Citizenship and Immigra-
3 tion Services, shall implement an electronic moni-
4 toring system to monitor presence and employment
5 of W nonimmigrants. Such system shall be modeled
6 on the Student and Exchange Visitor Information
7 System (SEVIS) and SEVIS II tracking system of
8 U.S. Immigration and Customs Enforcement.”.

9 (2) TABLE OF CONTENTS AMENDMENT.—The
10 table of contents in the first section (8 U.S.C. 1101
11 et seq.) is amended by adding after the item relating
12 to section 219 the following:

“Sec. 220. Admission of W nonimmigrant workers.”.

13 (b) INTENTION TO ABANDON FOREIGN RESI-
14 DENCE.—Section 214(h) (8 U.S.C. 1184(h)) is amended
15 by striking “or (V)” and inserting “(V), or (W)”.

16 **Subtitle H—Investing in New Ven-**
17 **ture, Entrepreneurial Startups,**
18 **and Technologies**

19 **SEC. 4801. NONIMMIGRANT INVEST VISAS.**

20 (a) INVEST NONIMMIGRANT CATEGORY.—Section
21 101(a)(15) (8 U.S.C. 1101(a)(15)), as amended by sec-
22 tions 2231, 2308, 2309, 3201, 4402, 4504, 4601, and
23 4702, is further amended by inserting after subparagraph
24 (W) the following:

1 “(X) in accordance with the definitions in
2 section 203(b)(6)(A), a qualified entrepreneur
3 who has demonstrated that, during the 3-year
4 period ending on the date on which the alien
5 filed an initial petition for nonimmigrant status
6 described in this clause—

7 “(i) a qualified venture capitalist, a
8 qualified super angel investor, a qualified
9 government entity, a qualified community
10 development financial institution, or such
11 other type of entity or investors, as deter-
12 mined by the Secretary, has made a quali-
13 fied investment of not less than \$100,000
14 in the alien’s United States business enti-
15 ty; or

16 “(ii) the alien’s United States busi-
17 ness entity has created no fewer than 3
18 qualified jobs and during the 2-year period
19 ending on such date has generated not less
20 than \$250,000 in annual revenue arising
21 from business conducted in the United
22 States; or”.

23 (b) ADMISSION OF INVEST NONIMMIGRANTS.—Sec-
24 tion 214 (8 U.S.C. 1184) is amended by adding at the
25 end the following:

1 “(s) INVEST NONIMMIGRANT VISAS.—

2 “(1) DEFINITIONS.—The definitions in section
3 203(b)(6)(A) apply to this subsection.

4 “(2) INITIAL PERIOD OF AUTHORIZED ADMIS-
5 SION.—The initial period of authorized status as a
6 nonimmigrant described in section 101(a)(15)(X)
7 shall be for an initial 3-year period.

8 “(3) RENEWAL OF ADMISSION.—Subject to
9 paragraph (4), the initial period of authorized non-
10 immigrant status described in paragraph (2) may be
11 renewed for additional 3-year periods if during the
12 most recent 3-year period that the alien was granted
13 such status—

14 “(A) the alien’s United States business en-
15 tity has created no fewer than 3 qualified jobs
16 and a qualified venture capitalist, a qualified
17 super angel investor, a qualified government en-
18 tity, a qualified community development finan-
19 cial institution, or such other type of entity or
20 investors, as determined by the Secretary, has
21 made a qualified investment of not less than
22 \$250,000 to the alien’s United States business
23 entity; or

24 “(B) the alien’s United States business en-
25 tity has created no fewer than 3 qualified jobs

1 and, during the 2 year period ending on the
2 date that the alien petitioned for an extension,
3 has generated not less than \$250,000 in annual
4 revenue arising from business conducted within
5 the United States.

6 “(4) WAIVER OF RENEWAL REQUIREMENTS.—
7 The Secretary may renew an alien’s status as a non-
8 immigrant described in section 101(a)(15)(X) for
9 not more than 1 year at a time, up to an aggregate
10 of 2 years if the alien—

11 “(A) does not meet the criteria of para-
12 graph (3); and

13 “(B) meets the criteria established by the
14 Secretary, in consultation with the Secretary of
15 Commerce, for approving renewals under this
16 subclause which shall include finding that—

17 “(i) the alien has made substantial
18 progress in meeting such criteria; and

19 “(ii) such renewal that is economically
20 beneficial to the United States.

21 “(5) ATTESTATION.—The Secretary may re-
22 quire an alien seeking status as a nonimmigrant de-
23 scribed in section 101(a)(15)(X) to attest, under
24 penalty of perjury, that the alien meets the applica-
25 tion criteria.

1 “(6) X-1 VISA FEE.—In addition to processing
2 fees, the Secretary shall collect a \$1,000 fee from
3 each nonimmigrant admitted under section
4 101(a)(15)(X). Fees collected under this paragraph
5 shall be deposited into the Comprehensive Immigra-
6 tion Reform Trust Fund established under section
7 6(a)(1) of the Border Security, Economic Oppor-
8 tunity, and Immigration Modernization Act.”.

9 **SEC. 4802. INVEST IMMIGRANT VISA.**

10 Section 203(b) (8 U.S.C. 1153(b)) is amended—

11 (1) by redesignating paragraph (6) as para-
12 graph (7); and

13 (2) by inserting after paragraph (5) the fol-
14 lowing:

15 “(6) INVEST IMMIGRANTS.—

16 “(A) DEFINITIONS.—In this paragraph,
17 section 101(a)(15)(X), and section 214(s):

18 “(i) QUALIFIED COMMUNITY DEVEL-
19 OPMENT FINANCIAL INSTITUTION.—The
20 term ‘qualified community development fi-
21 nancial institution’ is defined as provided
22 under section 1805.201 45D(c) of title 12,
23 Code of Federal Regulations, or any simi-
24 lar successor regulations.

1 “(ii) QUALIFIED ENTREPRENEUR.—

2 The term ‘qualified entrepreneur’ means
3 an individual who—

4 “(I) has a significant ownership
5 interest, which need not constitute a
6 majority interest, in a United States
7 business entity;

8 “(II) is employed in a senior ex-
9 ecutive position of such United States
10 business entity;

11 “(III) submits a business plan to
12 U.S. Citizenship and Immigration
13 Services; and

14 “(IV) had a substantial role in
15 the founding or early-stage growth
16 and development of such United
17 States business entity.

18 “(iii) QUALIFIED GOVERNMENT ENTI-
19 TY.—The term ‘qualified government enti-
20 ty’ means an agency or instrumentality of
21 the United States or of a State, local, or
22 tribal government.

23 “(iv) QUALIFIED INVESTMENT.—The
24 term ‘qualified investment’—

855

1 “(I) means an investment in a
2 qualified entrepreneur’s United States
3 business entity that is—

4 “(aa) a purchase from the
5 United States business entity or
6 equity or convertible debt issued
7 by such entity;

8 “(bb) a secured loan;

9 “(cc) a convertible debt
10 note;

11 “(dd) a public securities of-
12 fering;

13 “(ee) a research and devel-
14 opment award from a qualified
15 government entity to the United
16 States entity;

17 “(ff) other investment deter-
18 mined appropriate by the Sec-
19 retary; or

20 “(gg) a combination of the
21 investments described in items
22 (aa) through (ff); and

23 “(II) may not include an invest-
24 ment from such qualified entre-
25 preneur, the parents, spouse, son or

1 daughter of such qualified entre-
2 preneur, or from any corporation,
3 company, association, firm, partner-
4 ship, society, or joint stock company
5 over which such qualified entre-
6 preneur has a substantial ownership
7 interest.

8 “(v) QUALIFIED JOB.—The term
9 ‘qualified job’ means a full-time position of
10 United States business entity owned by a
11 qualified entrepreneur that—

12 “(I) is located in the United
13 States;

14 “(II) has been filled by an indi-
15 vidual who is not the qualified entre-
16 preneur or the spouse, son, or daugh-
17 ter of the qualified entrepreneur for at
18 least 2 years; and

19 “(III) pays a wage that is not
20 less than 250 percent of the Federal
21 minimum wage.

22 “(vi) QUALIFIED SUPER ANGEL IN-
23 VESTOR.—The term ‘qualified super angel
24 investor’ means an individual or organized

1 group of individuals investing directly or
2 through a legal entity—

3 “(I) each of whom is an accred-
4 ited investor, as defined in section
5 230.501(a) of title 17, Code of Fed-
6 eral Regulations, or any similar suc-
7 cessor regulation, investing the funds
8 owned by such individual or organized
9 group in a qualified entrepreneur’s
10 United States business entity;

11 “(II)(aa) if an individual, is a cit-
12 izen of the United States or an alien
13 lawfully admitted for permanent resi-
14 dence; or

15 “(bb) if an organized group or
16 legal entity, a majority of the individ-
17 uals investing through such group or
18 entity are citizens of the United
19 States or aliens lawfully admitted for
20 permanent residence; and

21 “(III) each of whom in the pre-
22 vious 3 years has made qualified in-
23 vestments in a total amount deter-
24 mined to be appropriate by the Sec-
25 retary, that is not less than \$50,000,

858

1 in United States business entities
2 which are less than 5 years old.

3 “(vii) QUALIFIED VENTURE CAPI-
4 TALIST.—The term ‘qualified venture capi-
5 talist’ means an entity—

6 “(I) that—

7 “(aa) is a venture capital
8 operating company, as defined in
9 section 2510.3-101(d) of title 29,
10 Code of Federal Regulations (or
11 any successor thereto); or

12 “(bb) has management
13 rights, as defined in, and to the
14 extent required by, such section
15 2510.3-101(d) (or successor
16 thereto), in its portfolio compa-
17 nies;

18 “(II) has capital commitments of
19 not less than \$10,000,000; and

20 “(III) the investment adviser,
21 that is registered under the Invest-
22 ment Advisers Act of 1940 (15 U.S.C.
23 80b-2), for which—

24 “(aa) has its primary office
25 location in the United States;

1 “(bb) is owned, directly or
2 indirectly, by individuals, the ma-
3 jority of whom are citizens of the
4 United States or aliens lawfully
5 admitted for permanent residence
6 in the United States;

7 “(cc) has been advising such
8 entity or other similar funds or
9 entities for at least 2 years; and

10 “(dd) has advised such enti-
11 ty or a similar fund or entity
12 with respect to at least 2 invest-
13 ments of not less than \$500,000
14 made by such entity or similar
15 fund or entity during each of the
16 most recent 2 years.

17 “(viii) SECRETARY.—Except as other-
18 wise specifically provided, the term ‘Sec-
19 retary’ means the Secretary of Homeland
20 Security.

21 “(ix) SENIOR EXECUTIVE POSITION.—
22 The term ‘senior executive position’ in-
23 cludes the position of chief executive offi-
24 cer, chief technology officer, and chief op-
25 erating officer.

1 “(x) UNITED STATES BUSINESS ENTI-
2 TY.—The term ‘United States business en-
3 tity’ means any corporation, company, as-
4 sociation, firm, partnership, society, or
5 joint stock company that is organized
6 under the laws of the United States or any
7 State and that conducts business in the
8 United States that is not—

9 “(I) a private fund, as defined in
10 202(a) of the Investment Advisers Act
11 of 1940 (15 U.S.C. 80b-2);

12 “(II) a commodity pool, as de-
13 fined in section 1a of the Commodity
14 Exchange Act (7 U.S.C. 1a);

15 “(III) an investment company, as
16 defined in section 3 of the Investment
17 Company Act of 1940 (15 U.S.C.
18 80a-3); or

19 “(IV) an issuer that would be an
20 investment company but for an ex-
21 emption provided in—

22 “(aa) section 3(c) of the In-
23 vestment Company Act of 1940
24 (15 U.S.C. 80a-3(c); or

1 “(BB) a qualified venture capi-
2 talist, a qualified super angel investor,
3 a qualified government entity, a quali-
4 fied community development financial
5 institution, or such other entity or
6 type of investors, as determined by
7 the Secretary, has devoted a qualified
8 investment of not less than \$500,000
9 to the alien’s United States business
10 entity; or

11 “(bb)(AA) the alien has a signifi-
12 cant ownership interest in a United
13 States business entity that has cre-
14 ated no fewer than 5 qualified jobs;
15 and

16 “(BB) during the 2-year period
17 ending on such date has generated not
18 less than \$750,000 in annual revenue
19 within the United States; and

20 “(IV) no more than 2 other aliens
21 have received nonimmigrant status under
22 this section on the basis of an alien’s own-
23 ership of such United States business enti-
24 ty;

1 “(ii)(I) the alien is a qualified entre-
2 preneur;

3 “(II) the alien maintained valid non-
4 immigrant status in the United States for
5 at least 3 years prior to the date of filing
6 an application for such status;

7 “(III) the alien holds an advanced de-
8 gree in a field of science, technology, engi-
9 neering, or mathematics, approved by the
10 Secretary; and

11 “(IV) during the 3-year period ending
12 on the date the alien files an initial peti-
13 tion for such status under this section—

14 “(aa)(AA) the alien has a signifi-
15 cant ownership interest in a United
16 States business entity that has cre-
17 ated no fewer than 4 qualified jobs;
18 and

19 “(BB) a qualified venture capi-
20 talist, a qualified super angel investor,
21 a qualified government entity, a quali-
22 fied community development financial
23 institution, or such other entity or
24 type of investors, as determined by
25 the Secretary, has devoted a qualified

1 investment of not less than \$500,000
2 to the alien's United States business
3 entity; or

4 “(bb)(AA) the alien has a signifi-
5 cant ownership interest in a United
6 States business entity that has cre-
7 ated no fewer than 3 qualified jobs;
8 and

9 “(BB) during the 2-year period
10 ending on such date has generated not
11 less than \$500,000 in annual revenue
12 within the United States; and

13 “(V) no more than 3 other aliens have
14 received nonimmigrant status under this
15 section on the basis of an alien's ownership
16 of such United States business entity.

17 “(D) ATTESTATION.—The Secretary may
18 require an alien seeking visa under this para-
19 graph to attest, under penalties of perjury, to
20 the alien's qualifications.”.

21 **SEC. 4803. ADMINISTRATION AND OVERSIGHT.**

22 (a) REGULATIONS.—Not later than 16 months after
23 the date of the enactment of this Act, the Secretary, in
24 consultation with the Secretary of Commerce, the Admin-
25 istrator of the Small Business Administration, and other

1 heads of other relevant Federal agencies and department,
2 shall promulgate regulations to carry out the amendments
3 made by this subtitle. Such regulations shall ensure that
4 such amendments are implemented in a manner that is
5 consistent with the protection of national security and pro-
6 motion of United States economic growth, job creation,
7 and competitiveness.

8 (b) MODIFICATION OF DOLLAR AMOUNTS.—

9 (1) IN GENERAL.—The Secretary may from
10 time to time prescribe regulations increasing or de-
11 creasing any dollar amount specified in section
12 203(b)(6) of the Immigration and Nationality Act,
13 as added by section 4802, section 101(a)(15)(X) of
14 such Act, as added by section 4801, or section
15 214(s), as added by section 4801.

16 (2) AUTOMATIC ADJUSTMENT.—Unless a dollar
17 amount referred to in paragraph (1) is adjusted by
18 the Secretary under paragraph (1), such dollar
19 amounts shall automatically adjust on January 1,
20 2016 by the percentage change in the Consumer
21 Price Index (CPI-U) during fiscal year 2015, and
22 on every fifth subsequent January 1 by the percent-
23 age change in the CPI-U during the previous 5 fiscal
24 years, for any petition filed to classify an alien under

1 this paragraph on or after the date of each auto-
2 matic adjustment.

3 (c) OTHER AUTHORITY.—The Secretary, in the Sec-
4 retary’s unreviewable discretion, may deny or revoke the
5 approval of a petition seeking classification of an alien
6 under paragraph (6) of section 203(b) of the Immigration
7 and Nationality Act, as added by section 4802, or any
8 other petition, application, or benefit based upon the pre-
9 vious or concurrent filing or approval of a petition for clas-
10 sification of an alien under such paragraph (6), if the Sec-
11 retary determines, in the Secretary’s sole and
12 unreviewable discretion, that the approval or continuation
13 of such petition, application, or benefit is contrary to the
14 national interest of the United States or for other good
15 cause.

16 (d) REPORTS.—Once every 3 years, the Secretary
17 shall submit to Congress a report on this subtitle and the
18 amendments made by this subtitle. Each such report shall
19 include—

20 (1) the number and percentage of entrepreneurs
21 able to meet thresholds for nonimmigrant renewal
22 and adjustment to green card status under the
23 amendments made by this subtitle;

24 (2) an analysis of the program’s economic im-
25 pact including job and revenue creation, increased

1 investments and growth within business sectors and
2 regions;

3 (3) a description and breakdown of types of
4 businesses that entrepreneurs granted nonimmigrant
5 or immigrant status are creating;

6 (4) for each reports following the Secretary's
7 initial report submitted under this subsection, a de-
8 scription of the percentage of the businesses initially
9 created by the entrepreneurs granted immigrant and
10 nonimmigrant status under this subtitle and the
11 amendments made by this subtitle, that are still in
12 operation;

13 (5) any recommendations for improving the
14 program established by this subtitle and the amend-
15 ments made by this subtitle.